GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 132/AIL/Lab./J/2011, dated 5th July 2011)

NOTIFICATION

Whereas, the Award in I.D.No. 9/2007, dated 31-1-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. M.R.F. Limited, Puducherry and Thiru G. Sathyakumar (Emp. No. 90031) over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G.O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Monday, the 31st day of January 2011

I.D. No. 9/2007

G. Sathyakumar (Emp. No. 90031),
S/o. K.Govindasamy,
No. 20, Vasantha Nagar,
Villianur Post, Pondicherry-605 110. .. Petitioner/
Workman.

Versus

The Management of M.R.F. Limited,
P. B. No.1, Eripakkam Village,
Nettapakkam Commune,
Pondicherry-605 106. .. Respondent/
Management.

This petition coming before me for final hearing on 31-1-2011 in the presence of Thiru T.Gunasegaran, advocate for the petitioner, Thiruvalargal L. Swaminathan and I. Ilankumar, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G.O. Rt. No. 46/2007/Lab./AIL/J, dated 14-3-2007, of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the non-employment of Mr. G. Sathyakumar by the management of M/s. M.R.F. Limited, Puducherry is justified or not?

(2) If not what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement would aver that the respondent is Limited Company registered under the Indian Companies Act, which manufactures tyres of all kinds and started its commercial production in the year 1998. At the time of starting its production, all the workers were designated as "Trainees/Apprentices" for a paltry wage of ₹40 per day and the workers who had I.T.I. qualification were paid ₹ 50 per day. The workers were not given the benefits of E.S.I. coverage or the benefits of PF coverage. After six months, few workers were given written order of appointment designating them as "Trainees". The management adopted the method of designation as "Trainees/Apprentices" only to deny the benefits of labour welfare legislations and utilising the insecurity in employment, it extracted more than the maximum possible workload from the workers. After two years in or about the year 2001, the workers by name Thiruvalargal (1) B. Sakthivel, (2) K. Deivasigamani, (3) V. Balamurugan, (4) S. Jayaprakash, (5) S. Bharathiraja, (6) P. Anbouradjou (7) C. Kumaravelan, (8) P. Pachyappan, (9) A. Sivanandhane, (10) S. Srinivasan and (11) P. Mohan, who had I.T.I., qualification were issued orders placing them on probation. The management did not have certified standing orders at the time of starting its production. But after about 3 years on 11-6-2001, the management handpicked certain workers to come to the Labour Department to give their consent for the certification of the draft of their standing orders. At that time, the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr.V. Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No. 20270/2001 and W.P. No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the writ petitions and the management's Writ Appeals Nos. 2043 and 2044 of 2002 against the said petitions, which is still pending.

The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No. 20/2002 sought for a direction not to register the union. During the pendency of the said writ petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a Writ Petition No. 1769/2002 was filed against the said registration. In the said writ petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No. 24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal. The petitioner was one such reinstated workers, who has been the member of the M.R.F. Thozhilalar Sangam.

The petitioner joined the service in the respondent's factory on 17-11-1998 and he was employed without any written order of appointment being given to him and was paid the rate of ₹ 40 per day. The oral order of appointment was given on 19-5-2000 designating the petitioner as Apprentice for a period of six months. Though he was orally designated as Apprentice he was actually doing the work of production as any other worker. In fact, all the workers were given written orders of appointment on the expiry of first six months period except four workmen including the petitioner. Thereafter no order was communicated to him and when he was terminated for the first time for his membership of the M.R.F. Thozhilalar Sangam, no written order was issued on being reinstated under the orders of Hon'ble High Court order, dated 10-6-2002.

The management through its handpicked men, having formed a trade union and having obtained registration for the same and having affiliated with the INTUC, the Labour Wing of the ruling Congress Party in Pondicherry, entered into a so-called settlement with the said outfit for certification of the standing orders, which standing orders do not apply for the petitioner as the same is as a result of a collusive arrangement with the handpicked men of the opposite party management and same is violated by fraud, collusion and is not a genuine settlement entered into with genuine collective bargaining agent, truly representing the workers. In any event the said settlement being one under section 18 (1) of the Industrial Disputes Act, it is not binding on the union in which the petitioner is a member.

The members of M.R.F. Thozhilalar Sangam having been subjected to hostile discrimination and ill treatment and the management unabashedly continuing to flout labour welfare legislation and employing contract labours in direct manufacturing process illegally, the said union decided should sit on a protest fast, to ensure protection of freedom of association of the workers. Accordingly Mr.V. Prakash, advocate, the President of the petitioner's union, sat on a fast at the respondent's factory for consecutive 5 days from 11-2-2004 to 15-2-2004. The petitioner was one among the workers who was active in the union activities relating to the fast that took place on 15-2-2004. The petitioner was issued memo. in English dated 21-1-2004 by which he was suspended and the petitioner was issued a show cause notice on 23-1-2004, for which petitioner replied through reply letter, dated 19-2-2004. The petitioner was issued an enquiry notice, dated 19-2-2004 stating that the enquiry would be held on 16-2-2004 wherein it was stated that the petitioner's reply was not satisfactory and the management had appointed Mr. K. Babu as an Enquiry Officer and instituted an enquiry. The Enquiry Officer gave his findings on 26-5-2004 stating that the charges framed against the petitioner are proved. The respondent management issued a second show cause notice, dated 3-6-2004 proposing dismissal of the petitioner from service. The petitioner gave his explanation in 9-6-2004 objecting to the report. On refusal of the explanation given by the petitioner, the respondent management issued an order of dismissal, dated 11-6-2004 to the petitioner. Against order of dismissal of petition of industrial dispute under section 2A of the Industrial Disputes Act. The impugned dismissal of the petitioner, dated 11-6-2004 is illegal and unjustified.

3. The respondent filed a common counter statement and contended that the petition is not maintainable either on law or on facts. The various allegations and contentions stated in the claim petition are factually incorrect and the petitioner only to achieve unlawful gains through suppression of material facts had approached the Labour Court with unclean hands. The factory at Pondicherry commenced trial production in the year 1998 and manufactured various radial tyres. The factory which started with 12 machines has slowly progressed to install nearly 131 machines as on date. As the manufacture of radial tyres is highly technical and is a complicated one and uses logistics control, the workmen takes time to learn the various skills on each machine and the workers have been inducted in phases over the past years. In order to give employment opportunity to the villagers, the respondent recruited the persons from nearby village of Puducherry who do not possess qualification beyond 12th standard. Only raw hands are recruited as Apprentices. The respondent denies that allegation with regard to E.S.I. and PF coverage. As soon as the ESI notification was given all the employees including the Trainees/Apprentices. The

Assistant Director of Employment and Training vested with powers convened a meeting of the Workmen on 19-9-2001 at the factory premises for the purpose of electing a workmen representative for certification of standing orders with their comments and corrections. The respondent management had engaged a maximum of 258 workmen out of which 16 are probationers, 140 are apprentices and 102 are casuals who are kept under observation to verify their willingness and to ascertain their basic aptitude. On and from 3-1-2001, an agitation commenced in the form of various illegal agitations and undesirable activities. By that time the probationary period of 6 probationers came to an end due to efflux of time and the training of 43 apprentices were determined and with no other alternative 102 casual services were dispensed with. Only at this backdrop, the so-called MRF Thozhilalargal Sangam had filed Writ Petition in W.P. No. 20270/2001 and W.P.No.20591/2001 and the respondent had filed Writ Appeals against the orders passed in the Writ Petitions in W.A.No.2043/2002 and WA No. 2044/2002 and the same is pending. In the said Writ Appeals, the Hon'ble High Court, Madras had granted stay of reinstating the terminated 49 workmen and other workmen were taken back at their original category and at that time only, the petitioner herein had been reinstated. The respondent further denies that the wages paid are less than the minimum wages. The respondent management always abides by the labour laws and therefore the settlement entered with the union which enjoyed majority cannot be questioned by an isolated person.

The petitioner was suspended from service on 21-1-2004 in contemplation of disciplinary proceedings and the petitioner was issued with a show cause notice on 23-1-2004 followed by an enquiry. After receipt of enquiry report, dated 9-12-2003, the respondent management completely perused the report and was subjectively satisfied that the enquiry officer had conducted the enquiry by permitting the petitioner to examine his two witnesses apart from his own deposition.The Enquiry Officer had submitted the enquiry report on 26-5-2004 with an observation that the charges framed against the petitioner are proved beyond reasonable doubt. The second show cause notice was issued on 3-6-2004 to the petitioner along with enquiry report and the petitioner has submitted his explanation on 9-6-2004. Based on the past records and enquiry report, the management had arrayed to a conclusion that the petitioner herein is not a fit person to be permitted to continue in service and therefore passed an order of dismissal, dated 11-6-2004.

4. On the side of the petitioner, no oral evidence was adduced on both sides. Ex.P1 to Ex.P8 were marked on the side of the petitioner. Ex.R1 to Ex.R25 were marked on the side of the respondent.

5. *Now the point for determination is:*

"Whether the non-employment of Mr. G. Sathyakumar by the management of M/s. M.R.F. Limited Puducherry" is justified or not?

6. *On point:*

The contention of the petitioner is that the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr.V. Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No. 20270/2001 and W.P. No.20591/2001 against such termination. The Hon'ble Madras High Court allowed the writ petitions and the management's Writ Appeals Nos.2043 and 2044 of 2002 against the said petitions, which is still pending. The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No. 20/2002 sought for a direction not to register the union. During the pendency of the said writ petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "MRF Employees Union" and a writ petition No. 1769/2002 was filed against the said registration. In the said writ petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No.24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal.

7. The contention of the respondent is that the petitioner had chosen only to elaborate about the formation of M.R.F. Thozhilalargal Sangam led by its Union President V. Prakash and more specifically concentrated about the orders passed by the Hon'ble High Court, Madras in W.P. No. 20270/2001, W.P. No. 20591/2001 and W.P. No. 19/2002, dated 10-6-2002, though the petitioner is not a party to the writ proceedings. He further submitted that the Division Bench of Hon'ble High Court, Madras by its order dated 4-1-2008 in W.A. No.2043 and 2044/2002 was pleased to modify the order in W.P. No. 20591/2001 and W.P. No. 19/2002 to the extent that the dismissed/ terminated employees had to approach the Labour Court or the Industrial Tribunal. The learned counsel for the respondent further submitted that in S.L.P. No. 6004-6006/2009 against the judgment and order, dated 4-1-2008 in W.A. Nos.2043 and 2044/2008 of Hon'ble High Court, Madras was preferred by the M.R.F. Thozilalargal Sangam and the Hon'ble Supreme Court by its record of proceedings dismissed the S.L.P. on 12-5-2009.

8. Neither the petitioner nor the respondent has produced the copies of the said judgments of the Hon'ble Supreme Court and Hon'ble High Court, Madras to come to the just decision of the case. In the absence of sufficient records, this court is not in a position to accept the contention of either the petitioner or the respondent.

9. The contention of the petitioner is that he joined the service of the respondent management on 19-5-2000 and he was employed without any written order of appointment being given to him and the oral order of appointment was given on 19-5-2000 designating him as apprentice for a period of six months. He further submitted that all the workers were given orders on the expiry of first six months period, except four workmen including him and thereafter no order was communicated to him.

10. On the side of the respondent, it is contended that the petitioner was a Trainee and no order in writing was issued to him appointing him as a Probationer as contemplated under the Certified Standing Orders, which is normally followed after completion of training period and since the petitioner was a Trainee, he cannot have any say regarding his appointment of Trainee and continuance of Trainee which is in conformity with clause 3.6 of Certified Standing Orders.

11. Clause 3.6 deals with Apprenticeship under the Apprenticeship Act, 1961, which runs as follows:—

> "..... Company Training Scheme/Trainee means a learner who is paid stipend and whose terms and conditions are governed by the provisions of the Apprentices Act, 1961 and the amendments thereof or one who is recruited to undergo Apprenticeship as per Company's scheme either as Production Apprentice or Engineering Apprentice or Apprentice for Service Department. The Apprenticeship period will be for 42 months comprising 4 spells, the first spell is for six months and the remaining 3 spells each are for one year duration and the company is not obliged to employ after the conclusion of their apprenticeship. At the expiry of any spell each training will be assessed and evaluated and on satisfactory completion of the training in each spell, the trainee will be put on to training for next spell. On completion of the total apprenticeship period the services will stand automatically terminated. However, they may be considered for the post of Probationer on satisfactory completion of training by the company at its discretion depending upon the exigencies and vacancy position. The status as an apprentice will not change until it is changed by the company in writing.... ....".

12. As per clause 3.6 of Apprenticeship Act, 1961, the apprenticeship period will be 42 months comprising four spells, the first spell is six months and the remaining three spells each are for one year. It is no where stated that the appointment order is not necessary for the trainees. Hence, the respondent management should have issued the appointment order to the petitioner, designating him as Trainee. Since both the petitioner and the respondent have admitted that the petitioner was Trainee at the time of terminating his service, much importance cannot be given for the above said point.

13. The next contention of the petitioner is that since he was active member in the M.R.F. Thozhilalar Sangam and since he was participated in the activities on the said union, he was terminated from service by raising false allegations against him.

14. *Per contra*, the contention of the respondent is that during the period of training, the petitioner had indulged in acts of indiscipline, insubordination, using filthy and obnoxious language, aiding and abetting the co-workers to squat, instigating the other workers were all proved in the enquiry proceedings and hence he was terminated from service. In order to support his claim, the learned counsel for the respondent has relied upon the following decisions:-

2011 LLR 51:

Dismissal from service - Of the appellant Manager (Sales) for threatening and abusing his superior - He was dismissed from service for misconduct duly proved in disciplinary enquiry -His writ petition against punishment was dismissed - Hence this writ appeal - In view of gravity of charge against the appellant, the punishment of dismissal cannot be stated to be disproportionate to the misconduct - Principles of natural justice were followed and proper opportunity was given to him - No ground found to interfere with the order of dismissal from service as upheld by Learned Single Judge.

2010 LLR 600 :

Industrial Disputes Act, 1947 - Section 11 A, Power of the Labour Court/Industrial Tribunal to give appropriate relief in cases of dismissal or discharge of the workman -Well settled law - Power under section 11 is not an appellate power- Exercise only when punishment imposed is shockingly disproportionate to charges proved in Departmental Inquiry -Punishment of putting him six stages down in pay scale for charge of misappropriation- Not shockingly disproportionate to the charges proved.

2010 LLR 744 :

Constitution of India, 1950 - Enquiry - Validity of - Principles of natural justice have been followed by the Enquiry Officer -Enquiry cannot be faulted on any ground and the findings are in no manner, perverse - No case is made out for interference with the said orders under Article 226 of the Constitution of India.

2010 LLR 993 :

Departmental proceedings - Judicial review of - Scope of -Judicial review is matters of disciplinary proceedings - Is to find out whether the findings are perverse or unreasonable-Writ court recorded that there is sufficient evidence to support the charges - There is no legal or other infirmity in the order under appeal - Appeal dismissed.

Departmental proceedings - Enquiry report not furnished - In fact the disciplinary authority has not given any findings of its own in respect of charges levelled - Enquiry report annexed with the second show cause notice - No prejudice caused to appellant.

(2008) 5 MLJ 733 :

When the charge of habitual absence against the employee was proved and the competent authority/employer imposed a proper punishment, it is not open to the Central Administrative Tribunal to interfere with the quantum of punishment on the premise that the charge of habitual absence of the employee was not grave. Such order of the CAT is clearly erroneous and is liable to be set aside.

(2008)3 MLJ 959 (SC) :

Punishment - Of removal from service - Imposed on respondent/teacher on ground of misconduct as he physically assaulted principal of School - Order of Tribunal quashing removal order and reducing punishment as being disproportionate - Same upheld by High Court in writ petition - Appeal - No good ground for Tribunal to interfere with punishment of removal imposed on respondent - Impugned order of High Court and Tribunal set aside - Appeal allowed.

2005 (2) CTC 730 :

.. Workman should have pleaded before employer at second show cause notice stage that proposed punishment was harsh and disproportionate to proved misconduct and that employer acted with *mala fide* - (i) Reading of various decisions would show that the following principles of law is laid down; The Tribunal is empowered to enquiry as to whether the enquiry conducted was fair and any principles of natural justice has been violated in the conduct of the enquiry; (ii) The Tribunal is empowered to enquiry as to whether the management *bona fide* came to the conclusion that the dismissal another punishment for the one which is sought to be meted out except when it finds that action of the management is shockingly disproportionate. Enquiry was fair and proper and charges were proved and the Tribunal should have approved the action of the employer in dismissing workman.

2001 LLR 587 :

Industrial Disputes Act, 1947 - Section 22 - Prohibition of strikes and lockouts - Strike in a hospital where public utility services are rendered will contravene the provisions of Section 22 - Such a strike would be *per se* illegal - Strike has been totally prohibited in utility service by the notification issued by the State Government - The strike resorted to by the workmen of the hospital is in contravention of the said prohibitory orders of the State Government issued under section 22 of the Industrial Disputes Act and, therefore, this strike is *per se* illegal as it violates the said notification and the prohibition orders.

Dismissal - Of hospital employees for resorting to and instigation for illegal strike - Before initiating disciplinary proceedings, it is not necessary that such a strike be declared as illegal.

2001 LLR 1213 :

Dismissal from service of Assistant Branch Manager - who was committed various acts of omission and commission during the period of his posting as enumerated in charge sheet - Disciplinary proceedings initiated - Disciplinary authority dismissed the petitioner from service on the basis of enquiry report - Appellate authority by a reasoned order rejected the appeal - Full opportunity is defend himself given in the enquiry - Hence, no illegality proceedings or order - Dismissal from service of petitioner held not illegal.

2001 LLR 401 (MP HC) :

Dismissal of bus conductor - Checking staff found that out of 23 passengers travelling in the bus 6 were travelling without ticket - The bus has covered 34 kms. From the place wherefrom 6 passengers had boarded the bus - Enquiry held - Charges proved - Dismissal of the conductor ordered -Challenged - Labour Court vitiated enquiry - Ordered reinstatement without back

wages - Industrial court directed reinstatement of the conductor with full back wages - Writ petition by the management - Corporation - High Court quashed the orders of Labour Court and Industrial Court -Dismissal as ordered by the Corporation upheld - A dishonest person could not be allowed to continue in employment - The conductor has lost the confidence.

2001 LLR 1154(SC) :

.. in such an event if the appellant -Corporation losses its confidence *vis-a-vis* in the employee it will be neither proper nor fair on the part of the-court to substitute the finding and confidence of the employee with that of its own by allowing reinstatement - The misconduct stands proved and in such a situation by reason of the gravity of the offence the Labour Court cannot exercise its discretion and alter the punishment - Also High Court was in error in dismissing the writ summarily - The termination order as passed by the Appellant Corporation is restored.

2001 LLR1237 (Kar. HC) :

Loss of confidence - When a bus conductor misappropriates money as collected - His reinstatement as awarded by the Labour Court and Learned Single Judge - Cannot be sustained.

2010 LLR 913 (Guj.HC) :

Dismissal - From service of bus conductor for misconduct of receiving fare and not issuing tickets - Challenged by petitioner-conductor - For proved misconduct - High Court is of considered opinion - Punishment of dismissal is not in any way disproportionate to the charges levelled against the conductor, particularly taking into account the past record of service - There cannot be any misplaced sympathy in such matters.

2009 (5) CTC 160 :

Departmental Proceedings - Punishment - Past misconduct and record of service - Relevancy of - No need to mention in notice calling for further representation.

(2008) 3 SCC 310 :

Service law - Probation/Probationer - Termination - Grounds - Unsatisfactory probation - Authority competent to direct termination in case of - Need to give reasons/explanation, if any - Held, assessment of probation has to be made by appointing authority itself - The authority is however not required to give reason for termination except to inform employee that his performance was found unsatisfactory.

15. In order to prove the misconduct of the petitioner, the respondent has marked the complaints received from the Production Supervisor and Shift Foreman as Ex.R1 to Ex.R3 and the warning letters issued to the petitioner as Ex.R12, Ex.P13, Ex.P15, Ex.P16, Ex.P17, Ex.P19, Ex.R21, Ex.R22, Ex.R24. Ex.R1 to Ex.R3 would show that he prevented the workers from making tyres and left the work spot without obtaining permission from his superiors. Ex.R12, Ex.P13, Ex.P15 to Ex.P17, Ex.P19, Ex.R21, Ex.R22 and Ex.R24 warning letters were issued to the petitioner for leaving the work spot without getting permission. The said documents are not challenged by the petitioner.

16. The final contention of the learned counsel for the petitioner is that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner and he has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice and moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings and in fact the petitioner has not committed any misconduct as alleged by the respondent, but the management had taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer the management dismissed the petitioner.

17. The learned counsel for the respondent would submit that they have followed the principles of natural justice while charging the petitioner and conducting the domestic enquiry by a neutral Inquiry Officer and on proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice and even in the domestic enquiry, the petitioner had been allowed to be assisted by their co-employee. The petitioner has been given fair chance to cross-examine the witnesses and the Inquiry Officer on considering the documents as well the evidences of the management witnesses, had rightly come to the conclusion that the charges of the petitioner were proved and on the conclusion of the report submitted by the Inquiry Officer the petitioner has been terminated from his services by way of punishment for the misconduct committed by him and hence, there is no scope to intervene in the order of this management by the Labour Court.

18. At this stage when I peruse the domestic enquiry report which has been marked as Ex.R6, relating to the petitioner, we can understand that the petitioner was advised to participate in the enquiry and the petitioner has participated in the enquiry. On the side of the

respondent four witnesses were examined and they were cross-examined by the petitioner. On the side of the petitioner, no witnesses were examined and no documents were marked. Then the enquiry was closed and based on the evidence available on records, the Enquiry Officer found that the charges framed against the petitioner are proved and accordingly, he submitted his report to the respondent management. Then based on the enquiry report, the respondent management issued a second show cause notice under Ex.R7 calling for his explanation. The petitioner submitted his written explanation under Ex.R8 and since the explanation submitted by the petitioner was not satisfactory, the respondent management dismissed from service.

19. Hence on perusal of Ex.R6 and other documents filed on the side of the respondent, it is evident that the petitioner was given fair opportunity to defend his case and the respondent has correctly followed the procedure for conducting the domestic enquiry as contemplated under labour law. Hence, the enquiry conducted by the respondent management is fair and proper.

20. The learned counsel for the respondent has pointed out the Apprenticeship order, which had been issued to the workers of the respondent management, which runs as follows:-

(a) You will be subject to the Certified Standing Orders and regulations as and when become applicable or amended or extended from time to time.

(b) On completion of the apprenticeship period, your services with us as an apprentice will stand automatically terminated.

(c) Should be guilty of any misconduct during the period of apprenticeship, you will be summarily dismissed from apprenticeship without notice or compensation *in lieu of* notice.

(d) The company does not guarantee any automatic confirmation in services at the end of apprenticeship period.

21. The above orders state that on completion of the apprenticeship period, the petitioners' services will stand automatically terminated. Hence, it is the implied factum that the petitioner cannot claim right over the appointment, since the appointment itself is not a permanent one or does not guarantee any automatic confirmation in service. In this case, the petitioner has joined as Apprentice and during the period of Apprentice, he had committed misconducts such as indiscipline, insubordination, aiding and abetting the co-workers to squat, instigating the other workers, which were proved in the domestic enquiry, conducted by the respondent management and hence, the respondent has taken action against the petitioner by terminating him from service, which is not against law.

22. The misconducts committed by the petitioner have been proved by way of conducting the enquiry and the said misconducts are very grave in nature during the period of apprentice. The respondent management has rightly taken the decision by terminating them from service. The decisions cited by the learned counsel for the respondent are squarely applicable to the present facts and circumstances of the case. However, the documents marked under Ex.P1 to Ex.P8 on the side of the petitioner are not supported to his claim. Hence, the petitioner is not entitled for reinstatement with continuity of service and back wages. But at the same time, the petitioner has rendered service in the respondent company for more than three years. He was hailing from poor family and he had been walking to this court for the past four years. Hence, considering the age of the petitioner and his family circumstances, the respondent is directed to pay a monetary compensation of ₹ 10,000 to the petitioner. Accordingly, this point is answered.

23. In the result, the petitioner is not entitled for reinstatement with continuity of service and back wages. However, the respondent is directed to pay a sum of ₹ 10,000 towards the monetary compensation to the petitioner. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of February 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

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List of witnesses examined for the petitoner: Nil.

List of witnesses examined for the respondent: Nil.

List of exhibits marked for the petitioner:

Ex.P1	—	21-1-2004	Photocopy of suspension order.
Ex.P2	—	23-1-2004	Show cause notice.
Ex.P3	—	–	Explanations given by the petitioner.
Ex.P4	—	19-2-2004	Enquiry notice.
Ex.P5	—	3-6-2004	Second show cause notice.
Ex.P6	—	9-6-2004	Explanations given by the petitioner.
Ex.P7	—	11-6-2004	Dismissal order.
Ex.P8	—	18-10-2006	Failure report, dated 18-10-2006 issued by the Labour Officer (Conciliation), Pondicherry.

List of exhibits marked for the respondent by consent:

Ex.R1 — 21-1-2004 Copy of the complaint received from the Supervisor.

Ex.R2 — 21-1-2004 Copy of the complaint received from the Supervisor.

Ex.R3 — 21-1-2004 Copy of the complaint received from Supervisor.

Ex.R4 — 23-1-2004 Copy of the show cause notice issued to petitioner.

Ex.R5 — 19-2-2004 Explanation of the petitioner

Ex.R6 — – Copy of the enquiry report.

Ex.R7 — 3-6-2004 Copy of Second show cause notice issued to petitioner.

Ex.R8 — 9-6-2004 Copy of written explanation of the petitioner

Ex.R9 — 27-2-2006 Copy of the petition filed before the Labour Officer.

Ex.R10— 24-7-2006 Copy of counter statement filed by the respondent.

Ex.R11— – Copy of Tamil version of Standing Order.

Ex.R12— 23-1-2003 Copy of the warning letter issued to the petitioner.

Ex.R13—31-3-2003 Warning letter issued to the petitioner.

Ex.R14— – Copy of unclaimed RPAD cover sent to the petitioner.

Ex.R15— 9-9-2003 Copy of warning letter, dated 9-9-2003.

Ex.R16—16-10-2003 Copy of warning letter.

Ex.R17—17-10-2003 Copy of warning letter issued to the petitioner.

Ex.R18—18-10-2003 Copy of unclaimed RPAD.

Ex.R19—20-10-2003 Copy of warning letter issued to the petitioner.

Ex.R20— 22-10-2003 Copy of unclaimed RPAD.

Ex.R21—25-10-2003 Copy of warning letter issued to the petitioner.

Ex.R22— 2-11-2003 Copy of warning letter issued to the petitioner.

Ex.R23—19-11-2003 Copy of unclaimed RPAD.

Ex.R24—20-11-2003 Copy of warning letter issued to the petitioner.

Ex.R25— 16-12-2003 Copy of unclaimed RPAD.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 133/AIL/Lab./J/2011, dated 6th July 2011*)

NOTIFICATION

Whereas, the Award in I. D. No.14/2007, dated 31-1-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. M.R.F. Limited, Puducherry and Thiru R. Azhagan (Emp.No.70000) over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Monday, the 31st day of January 2011

I.D. No. 14/2007

R. Azhagan (Emp. No. 70000),
S/o. T.Rangapashyam,
No.18, P.S. Nallur Road,
Kalmandapam,
Pondicherry-605 106. .. Petitioner

Versus

The Management of M.R.F. Limited,
P.B. No.1, Eripakkam Village,
Nettapakkam Commune,
Pondicherry-605 106. .. Respondent

This petition coming before me for final hearing on 31-1-2011 in the presence of Thiru T. Gunasegaran, advocate for the petitioner, Thiruvalargal L. Swaminathan and I. Ilankumar, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G. O. Rt. No. 51/2007/Lab./AIL/J, dated 14-3-2007 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the non-employment of R. Azhagan by the management of M/s. M.R.F. Limited, Puducherry is justified or not?

(2) If not what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement would aver that the respondent is a Limited Company registered under the Indian Companies Act, which manufactures tyres of all kinds and started its commercial production in the year 1998. At the time of starting its production, all the workers were designated as "Trainees/ Apprentices" for a paltry wage of ₹ 40 per day and the workers who had I.T.I. qualification were paid ₹ 50 per day. The workers were not given the benefits of E.S.I. coverage or the benefits of P.F. coverage. After six months, few workers were given written order of appointment designating them as "Trainees". The management adopted the method of designation as "Trainees/Apprentices" only to deny the benefits of labour welfare legislations and utilising the insecurity in employment, it extracted more than the maximum possible workload from the workers. After two years in or about the year 2001, the workers by name Thiruvalargal (1) B. Sakthivel, (2) K. Deivasigamani, (3) V. Balamurugan, (4) S. Jayaprakash, (5) S. Bharathiraja, (6) P. Anbouradjou (7) C. Kumaravelan, (8) P. Pachyappan, (9) A. Sivanandhane, (10) S. Srinivasan and (11) P. Mohan, who had I.T.I, qualification, were issued orders placing them on probation. The management did not have certified standings orders at the time of starting its production. But after about 3 years on 11-6-2001, the management handpicked certain workers to come to the Labour Department to give their consent for the certification of the draft of their standing orders. At that time, the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr.V.Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No.20270/2001 and WP. No.20591/2001 against such termination. The Hon'ble Madras High Court allowed the writ petitions and the management's Writ Appeals Nos. 2043 and 2044 of 2002 against the said petitions, which is still pending.

The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No.20/2002 sought for a direction not to register the union. During the pendency of the said writ petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a Writ Petition No. 1769/2002 was filed against the said registration. In the said writ petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed WP. No.24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal, The petitioner was one such reinstated workers, who has been the member of the M.R.F. Thozhilalar Sangam.

The petitioner joined the service in the respondent's factory on 11-9-1997 and he was employed without any written order of appointment being given to him and was paid the rate of ₹ 45 per day. On 30-5-1998 the respondent's factory had given a first written order of appointment designating the petitioner as "Apprentice" for a period of 6 months. On the expiry of 6 months period set out in the aforesaid order, he was again issued a second order, dated 1-5-1999 again designating him as an "Apprentice" for another period of 6 months. Further, after expiry of another 6 months, the petitioner was again issued another order, dated 1-11-1999 designating him as "Apprentice". On 1-5-2000 again another order was issued designating him as "Apprentice". Thereafter no order was communicated to him and when he was terminated for the first time for his membership of the M.R.F. Thozhilalar Sangam, no written order was issued on being reinstated under the orders of the Hon'ble High Court, dated 10-6-2002. The model of standing orders which applies to the petitioner, states that worker cannot be kept as trainee beyond 6 months.

The management through its handpicked men, having formed a trade union and having obtained registration for the same and having affiliated with the INTUC, the Labour Wing of the ruling Congress Party in

Pondicherry, entered into a so-called settlement with the said outfit for certification of the standing orders, which standing orders do not apply for the petitioner as the same is as a result of a collusive arrangement with the handpicked men of the opposite party management and same is violated by fraud, collusion and is not a genuine settlement entered into with genuine collective bargaining agent, truly representing the workers. In any event the said settlement being one under section 18(1) of the Industrial Disputes Act, it is not binding on the union in which the petitioner is a member.

The members of M.R.F. Thozhilalar Sangam having been subjected to hostile discrimination and ill treatment and the management unabashedly continuing to flout labour welfare legislation and employing contract labours in direct manufacturing process illegally, the said union decided should sit on a protest fast, to ensure protection of freedom of association of the workers. Accordingly Mr.V. Prakash, advocate, the President of the petitioner's union, sat on a fast at the respondent's factory for consecutive 5 days from 11-2-2004 to 15-2-2004. The petitioner was one among the workers who was active in the union activities relating to the fast that took place on 15-2-2004. The petitioner was issued a suspension pending enquiry order, dated 30-1-2004 and the petitioner was issued a show cause notice on 1-2-2004, after 4 days of issuing the suspension order. The petitioner sent his reply through registered post with acknowledge due, dated 7-2-2004. Thereafter, the petitioner was issued an enquiry notice stating that the enquiry would be held on 13-3-2004. The Enquiry Officer after completing the enquiry proceedings, found that the charges framed against the petitioner were proved. Hence, the management issued a second show cause notice, dated 3-6-2004 proposing dismissal of the petitioner from service and accepting the findings of the Enquiry Officer. The petitioner gave his explanation on 8-6-2004 objecting the report and the management's decision is not giving him an opportunity to show cause against such allegation. The impugned dismissal of the petitioner, dated 11-6-2004 is illegal and unjustified. Hence, he prays to pass an order directing the respondent-management to reinstate the petitioner in service with back wages, continuity of service and other consequential benefits and award costs.

3. The respondent filed a common counter statement and contended that the petition is not maintainable either on law or on facts. The various allegations and contentions stated in the claim petition are factually incorrect and the petitioner only to achieve unlawful gains through suppression of material facts had approached the Labour Court with unclean hands. The factory at Pondicherry commenced trial production in the year 1998 and manufactured various radial tyres. The factory which started with 12 machines has slowly progressed to install nearly 131 machines as on date. As the manufacture of radial tyres is highly technical and is a complicated one and uses logistics control, the workmen takes time to learn the various skills on each machine and the workers have been inducted in phases over the past years. In order to give employment opportunity to the villagers, the respondent recruited the persons from nearby village of Puducherry who do not possess qualification beyond 12th standard. Only raw hands are recruited as Apprentices. The respondent denies that allegation with regard to E.S.I. and P.F. coverage. As soon as the E.S.I. notification was given all the employees including the Trainees/Apprentices. The Assistant Director of Employment and Training vested with powers convened a meeting of the workmen on 19-9-2001 at the factory premises for the purpose of electing a workmen representative for certification of standing orders with their comments and corrections. The respondent management had engaged a maximum of 258 workmen out of which 16 are probationers, 140 are Apprentices and 102 are casuals who are kept under observation to verify their willingness and to ascertain their basic aptitude. On and from 3-1-2001, an agitation commenced in the form of various illegal agitations and undesirable activities. By that time the probationary period of 6 probationers came to an end due to efflux of time and the training of 43 apprentices were determined and with no other alternative 102 casual services were dispensed with. Only at this backdrop, the so-called M.R.F. Thozhilalargal Sangam had filed Writ Petition in W.P. No. 20270/2001 and W.P.No.20591/2001 and the respondent had filed writ Appeals against the orders passed in the Writ Petitions in W.A.No.2043/2002 and W.A. No. 2044/2002 and the same is pending. In the said writ appeals, the Hon'ble High Court, Madras had granted stay of reinstating the terminated 49 workmen and other workmen were taken back at their original category and at that time only, the petitioner herein had been reinstated. The respondent further denies that the wages paid are less than the minimum wages. The respondent management always abides by the labour laws and therefore the settlement entered with the union which enjoyed majority cannot be questioned by an isolated person.

The petitioner was suspended from service on 31-1-2004 in contemplation of disciplinary proceedings and the petitioner was issued with a show cause notice on 1-2-2004 followed by an enquiry. After receipt of enquiry report, dated 26-5-2004, the respondent management completely perused the report and was

subjectively satisfied that the Enquiry Officer had conducted the enquiry by permitting the petitioner to examine his two witnesses apart from his own deposition. The Enquiry Officer had submitted the enquiry report on 26-5-2004 with an observation that the charges framed against the petitioner are proved beyond reasonable doubt. In strict adherence to natural justice, the second show cause notice, dated 3-6-2004 was issued to the petitioner along with enquiry report, for which the petitioner submitted his reply on 8-6-2004. On perusal of the past records, enquiry report and explanation given by the petitioner, the respondent management had arrayed to a conclusion to dismiss the petitioner and therefore passed an order of dismissal, dated 11-6-2004. Hence, they pray for dismissal of the industrial dispute.

4. *Now the point for determination is:*

"Whether the non-employment of Mr. R. Azhagan by the management of M/s. M.R.F. Limited, Puducherry is justified or not?"

On point:

5. The contention of the petitioner is that the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr.V.Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No. 20270/2001 and W.P. No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the writ petitions and the management's Writ Appeals Nos.2043 and 2044 of 2002 against the said petitions, which is still pending. The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No.20/2002 sought for a direction not to register the union. During the pendency of the said writ petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a Writ Petition No. 1769/2002 was filed against the said registration. In the said writ petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No.24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal.

6. The contention of the respondent is that the petitioner had chosen only to elaborate about the formation of M.R.F. Thozhilalargal Sangam led by its Union President V. Prakash and more specifically concentrated about the orders passed by the Hon'ble High Court, Madras in W.P. No.20270/2001, W.P. No. 20591/2001 and W.P. No.19/2002, dated 10-6-2002, though the petitioner is not a party to the writ proceedings. He further submitted that the Division Bench of Hon'ble High Court, Madras by its order, dated 4-1-2008 in W.A. No.2043 and 2044/2002 was pleased to modify the order in W.P. No. 20591/2001 and W.P. No. 19/2002 to the extent that the dismissed/terminated employees had to approach the Labour Court or the Industrial Tribunal. The learned counsel for the respondent further submitted that in S.L.P. No. 6004-6006/2009 against the judgment and order, dated 4-1-2008 in W.A. Nos. 2043 and 2044/2008 of Hon'ble High Court, Madras was preferred by the M.R.F. Thozilalargal Sangam and the Hon'ble Supreme Court by its record of proceedings dismissed the S.L.P. on 12-5-2009.

7. Neither the petitioner nor the respondent has produced the copies of the said judgments of the Hon'ble Supreme Court and Hon'ble High Court, Madras to come to the just decision of the case. In the absence of sufficient records, this court is not in a position to accept the contention of either the petitioner or the respondent.

8. The contention of the petitioner is that he joined the service of the respondent management on 11-9-1997 without any written order and the first written order of appointment was given on 30-5-1998 designating him as Apprentice for a period of six months, he was again issued a second order, dated 1-5-1999 for another period of six month designating as Apprentice and on the expiry of next period of six months, he was again issued another order once again designating as apprentice for a further period of six months on 1-11-1999 and he was again issued another order designating him as Apprentice, dated 1-5-2000 and the model standing orders, which applies to him states that a worker cannot be kept as a trainee beyond six months.

9. In order to prove his claim, the petitioner was examined himself as PW.1, who has stated about the said facts and through him, Ex.P1 to Ex.P9. Ex.P1 is the first appointment order, dated 30-5-1998 issued to him designating as Apprentice, Ex.P2 is the second order, dated 1-5-1999, Ex.P3 is the third order, dated 1-11-1999 and Ex.P4 is the fourth order, dated 1-5-2000.

10. On the side of the respondent, it is submitted that clause 3 of the certified standing orders of respondent company speaks about the classification of workman and clause 3.6 deals with Apprenticeship under the Apprenticeship Act, 1961, which runs as follows:-

> "..... Company Training Scheme/Trainee means a learner who is paid stipend and whose terms and conditions are governed by the provisions of the Apprentices Act, 1961 and the amendments thereof

or one who is recruited to undergo Apprenticeship as per company's scheme either as Production Apprentice or Engineering Apprentice or Apprentice for Service Department. The apprenticeship period will be for 42 months comprising 4 spells, the first spell is for six months and the remaining 3 spells each are for one year duration and the company is not obliged to employ after the conclusion of their apprenticeship. At the expiry of any spell each training will be assessed and evaluated and on satisfactory completion of the training in each spell, the trainee will be put on to training for next spell. On completion of the total apprenticeship period the services will stand automatically terminated. However, they may be considered for the post of Probationer on satisfactory completion of training by the company at its discretion depending upon the exigencies and vacancy position. The status as an apprentice will not change until it is changed by the company in writing ....."

11. As per clause 3.6 of apprenticeship under the Apprenticeship Act, 1961, the apprenticeship period will be 42 months comprising four spells, the first spell is six months and the remaining three spells each are for one year and accordingly, the respondent company issued Ex.P1 to Ex.P3 to the petitioner. Hence, there is no violation of standing orders by the respondent company in issuing the appointment order to the petitioner, as stated by the petitioner.

12. The next contention of the petitioner is that since he was active member in the M.R.F. Thozhilalar Sangam and since he was participated in the activities on the said union, he was terminated from service by raising false allegations against him.

13. *Per contra,* the contention of the respondent is that during the period of training, the petitioner had indulged in acts of indiscipline, insubordination, using filthy and obnoxious language, aiding and abetting the co-workers to squat, instigating the other workers were all proved in the enquiry proceedings and hence he was terminated from service. In order to support his claim, the learned counsel for the respondent has relied upon the following decisions:-

2011 LLR 51:

Dismissal from service - Of the appellant Manager (Sales) for threatening and abusing his superior- He was dismissed from service for misconduct duly proved in disciplinary enquiry - His writ petition against punishment was dismissed - Hence this writ appeal - In view of gravity of charge against the appellant, the punishment of dismissal cannot be stated to be disproportionate to the misconduct - Principles of natural justice were followed and proper opportunity was given to him - No ground found to interfere with the order of dismissal from service as upheld by Learned Single Judge.

2010 ULR 600 :

Industrial Disputes Act, 1947 - Section 11 A, Power of the Labour Court/Industrial Tribunal to give appropriate relief in cases of dismissal or discharge of the workman - Well settled law- Power under section 11 is not an appellate power - Exercise only when punishment imposed is shockingly disproportionate to charges proved in Departmental Inquiry -Punishment of putting him six stages down in pay scale for charge of misappropriation-Not shockingly disproportionate to the charges proved.

2010 LLR 744 :

Constitution of India, 1950 - Enquiry - Validity of - Principles of natural justice have been followed by the Enquiry Officer -Enquiry cannot be faulted on any ground and the findings are in no manner, perverse - No case is made out for interference with the said orders under Article 226 of the Constitution of India.

2010 LLR 993 :

Departmental proceedings - Judicial review of - Scope of -Judicial review is matters of disciplinary proceedings - is to find out whether the findings are perverse or unreasonable-Writ court recorded that there is sufficient evidence to support the charges - There is no legal or other infirmity in the order under appeal - Appeal dismissed.

Departmental proceedings - Enquiry report not furnished - In fact the disciplinary authority has not given any findings of its own in respect of charges levelled - Enquiry report annexed with the second show cause notice - No prejudice caused to appellant.

(2008) 5 MLJ 733 :

When the charge of habitual absence against the employee was proved and the competent authority/employer imposed a proper punishment, it is not open to the Central Administrative Tribunal to interfere with the quantum of punishment on the premise that the charge of habitual absence of the employee was not grave. Such order of the CAT is clearly erroneous and is liable to be set aside.

(2008)3 MLJ 959 (SC) :

Punishment - Of removal from service - Imposed on respondent/teacher on ground of misconduct as he physically assaulted principal of School - Order of Tribunal quashing removal order and reducing punishment as being disproportionate - Same upheld by High Court in writ petition - Appeal - No good ground for Tribunal to interfere with punishment of removal imposed on respondent - Impugned order of High Court and Tribunal set aside - Appeal allowed.

2005 (2) CTC 730 :

.. Workman should have pleaded before employer at second show cause notice stage that proposed punishment was harsh and disproportionate to proved misconduct and that employer acted with *mala fide* - (i) Reading of various decisions would show that the following principles of law is laid down; The Tribunal is empowered to enquiry as to whether the enquiry conducted was fair and any principles of natural justice has been violated in the conduct of the enquiry; (ii)The Tribunal is empowered to enquiry as to whether the management *bona fide* came to the conclusion that the dismissal another punishment for the one which is sought to be meted out except when it finds that action of the management is shockingly disproportionate. .... Enquiry was fair and proper and charges were proved and the Tribunal should have approved the action of the employer in dismissing workman.

2001 LLR 587 :

Industrial Disputes Act, 1947 - Section 22 - Prohibition of strikes and lockouts - Strike in a hospital where public utility services are rendered will contravene the provisions of Section 22 - Such a strike would be *per se* illegal - Strike has been totally prohibited in utility service by the notification issued by the State Government - The strike resorted to by the workmen of the hospital is in contravention of the said prohibitory orders of the State Government issued under section 22 of the Industrial Disputes Act and, therefore, this strike is *per se* illegal as it violates the said notification and the prohibition orders.

Dismissal - Of hospital employees for resorting to and instigation for illegal strike - Before initiating disciplinary proceedings, it is not necessary that such a strike be declared as illegal.

2001 LLR 1213 :

Dismissal from service of Assistant Branch Manager - who was committed various acts of omission and commission during the period of his posting as enumerated in charge sheet - Disciplinary proceedings initiated - Disciplinary authority dismissed the petitioner from service on the basis of enquiry report - Appellate authority by a reasoned order rejected the appeal - Full opportunity is defend himself given in the enquiry - Hence, no illegality proceedings or order - Dismissal from service of petitioner held not illegal.

2001 LLR 401 (MP HC) :

Dismissal of bus conductor - Checking staff found that out of 23 passengers travelling in the bus 6 were travelling without ticket - The bus has covered 34 kms. From the place wherefrom 6 passangers had boarded the bus - Enquiry held - Charges proved - Dismissal of the conductor ordered -Challenged - Labour Court vitiated enquiry - Ordered reinstatement without back wages - Industrial court directed reinstatement of the conductor with full back wages - Writ petition by the management - Corporation - High Court quashed the orders of Labour Court and Industrial Court -dismissal as ordered by the Corporation upheld - A dishonest person could not be allowed to continue in employment - The conductor has lost the confidence.

2001 LLR 1154 (SC) :

.. in such an event if the appellant -corporation losses its confidence *vis-a-vis* in the employee it will be neither proper nor fair on the part of the court to substitute the finding and confidence of the employee with that of its own by allowing reinstatement - The misconduct stands proved and in such a situation by reason of the gravity of the offence the Labour Court cannot exercise its discretion and alter the punishment - Also High Court was in error in dismissing the writ summarily - The termination order as passed by the Appellant Corporation is restored.

2001 LLR 1237 (Kar HC) :

Loss of confidence - When a bus conductor misappropriates money as collected - His reinstatement as awarded by the Labour Court and Learned Single Judge - Cannot be sustained.

2010 LLR 913 (Guj. HC) :

Dismissal - From service of bus conductor for misconduct of receiving fare and not issuing tickets - Challenged by petitioner-conductor - For proved misconduct - High Court is of considered opinion - Punishment of dismissal is not in any way disproportionate to the charges levelled against the conductor, particularly taking into account the past record of service - There cannot be any misplaced sympathy in such matters.

2009(5) CTC 160 :

Departmental Proceedings - Punishment - Past misconduct and record of service - Relevancy of - No need to mention in notice calling for further representation.

(2008) 3 SCC 310 :

Service law - Probation/Probationer - Termination ~ Grounds - Unsatisfactory probation - Authority competent to direct termination in case of - Need to give reasons/explanation, if any - Held, assessment of probation has to be made by appointing authority itself - The authority is however not required to give reason for termination except to inform employee that his performance was found unsatisfactory.

14. In order to prove the misconduct of the petitioner, the respondent has marked the complaint received from the Production Supervisor as Ex.R1 and from the Engineering Supervisor as Ex.R2 and warning letters issued to the petitioner as Ex.R12 to Ex.R14. A perusal of Ex.R12 and Ex.P14 reveals that the petitioner was issued warning notices for his absent from work without information. Ex.R1 and Ex.R2 were received from the staff of the respondent management for the misbehaviour committed by the petitioner during the office hours. Those documents are not challenged by the petitioner.

15. The final contention of the learned counsel for the petitioner is that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner and he has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice and moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings and in fact the petitioner has not committed any misconduct as alleged by the respondent, but the management had taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer the management dismissed the petitioner.

16. The learned counsel for the respondent would submit that they have followed the principles of natural justice while charging the petitioner and conducting the domestic enquiry by a neutral Inquiry Officer and on proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice and even in the domestic enquiry, the petitioner had been allowed to be assisted by their co-employee. The petitioner has been given fair chance to cross-examine the witnesses and the Inquiry Officer on considering the documents as well the evidences of the management witnesses, had rightly come to the conclusion that the charges of the petitioner were proved and on the conclusion of the report submitted by the Inquiry Officer the petitioner has been terminated from his services by way of punishment for the misconduct committed by him and hence, there is no scope to intervene in the order of this management by the Labour Court.

17. At this stage when I peruse the domestic enquiry report which has been marked as Ex.R5, relating to the petitioner, we can understand that the petitioner was advised to participate in the enquiry, which was scheduled to be conducted from 13-3-2004 to 13-5-2004 and the petitioner has participated in the enquiry proceedings. On the side of the respondent, three witnesses were examined and they were cross-examined by the petitioner. On side of the petitioner, no oral and documentary evidence was adduced, though sufficient opportunity was given to him. On 13-5-2004 the enquiry was closed. The enquiry officer based on the evidence of the witnesses and the documents available on records, found that the charges framed against the petitioner are proved and accordingly, he submitted his report to the respondent management. Then based on the enquiry report, the respondent management issued a second show cause notice under Ex.R6 calling for his explanation. The petitioner submitted his written explanation under Ex.R7 and since the explanation submitted by the petitioner was not satisfactory, the respondent management dismissed the petitioner from service.

18. Hence on perusal of Ex.R5 and other documents filed on the side of the respondent, it is evident that the petitioner was given fair opportunity to defend his case and the respondent has correctly followed the procedure for conducting the domestic enquiry as contemplated under labour law. Hence, the enquiry conducted by the respondent management is fair and proper.

19. The learned counsel for the respondent has pointed out the Apprenticeship Order under Ex.P1 to Ex.P4, which runs as follows:-

(a) You will be subject to the Certified Standing Orders and regulations as and when become applicable or amended or extended from time to time.

(b) On completion of the apprenticeship period, your services with us as an apprentice will stand automatically terminated.

(c) Should be guilty of any misconduct during the period of apprenticeship, you will be summarily dismissed from apprenticeship without notice or compensation *in lieu of* notice.

(d) The company does not guarantee any automatic confirmation in services at the end of apprenticeship period.

20. The above orders state that on completion of the apprenticeship period, the petitioner's services will stand automatically terminated. Hence, it is the implied factum that the petitioner cannot claim right over the appointment since the appointment itself is not a permanent one or does not guarantee any automatic confirmation in service. In this case, the petitioner on accepting the above terms and conditions of the order of respondent company, has joined as Apprentice and during the period of Apprentice, he had committed misconducts such as indiscipline, insubordination and aiding and abetting the co-workers to squat, instigating the other workers, which were proved in the domestic enquiry, conducted by the respondent management and hence, the respondent has taken action against the petitioner by terminating him from service, which is not against law.

21. The misconducts committed by the petitioner have been proved by way of conducting the enquiry and the said misconducts are very grave in nature during the period of apprentice. The respondent management has rightly taken the decision by terminating them from service. The decisions cited by the learned counsel for the respondent are squarely applicable to the present facts and circumstances of the case. However, the documents marked under Ex.P1 to Ex.P7 on the side of the petitioner, are not supported to his claim. Hence, the petitioner is not entitled for reinstatement with continuity of service and back wages. But at the same time, the petitioner has rendered service in the respondent company for more than three years. He was hailing from poor families and he had been walking to this court for the past four years. Hence, considering the age of the petitioner and his family circumstances, the respondent is directed to pay a monetary compensation of ₹ 10,000 to the petitioner. Accordingly, this point is answered.

22. In the result, the petitioner is not entitled for reinstatement with continuity of service and back wages. However, the respondent is directed to pay a sum of ₹ 10,000 towards the monetary compensation to the petitioner. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

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List of witnesses examined for the petitioner:

PW.1 — 22-2-2010 R. Azhagan

List of witnesses examined for the respondent: Nil

List of exhibits marked for the petitioner:

Ex.P1 — 30-5-1998 Apprenticeship order

Ex.P2 — 1-5-1999 Apprenticeship order

Ex.P3 — 1-11-1999 Apprenticeship order

Ex.P4 — 1-5-2000 Apprenticeship order

Ex.P5 — 1-2-2004 Show cause notice

Ex.P6 — 11-6-2004 Dismissal order

Ex.P7 — 18-10-2006 Failure report, issued by the Labour Officer (Conciliation), Pondicherry.

List of exhibits marked for the respondent by consent:

Ex.R1 — 29-1-2004 Complaint from Production Supervisor marked by consent.

Ex.R2 — 29-1-2004 Complaint from the Engineering Supervisor marked by consent.

Ex.R3 — 1-2-2004 Show cause notice issued by respondent management, marked by consent.

Ex.R4 — 19-2-2004 Written explanation of the claim petitioner, marked by consent.

Ex.R5 —26-5-2004 Enquiry report with regard to show cause notice, marked by consent.

Ex.R6 — 3-6-2004 Second show cause notice marked by consent.

Ex.R7 — 8-6-2004 Written explanation of the claim petitioner, marked by consent.

Ex.R8 — 7-6-2006 Petition, dated filed under section 2A before the Labour Officer (Conciliation), Puducherry.

Ex.R9 — 23-8-2006 Counter statement, filed by the respondent management before the Labour Officer (Conciliation), Puducherry.

Ex.R10	23-8-2006	Counter statement, filed by the respondent management before the Labour Officer (Conciliation), Puducherry.
Ex.R11	1-5-1999	Apprenticeship order of the claim petitioner, dated marked by consent.
Ex.R12	1-11-2003	Warning notice issued to the claim petitioner, marked by consent.
Ex.R13	–	Copy of the unclaimed RPAD cover sent to the petitioner, marked by consent.
Ex.R14	26-12-2003	Severe warning letter issued to the claim petitioner, marked by consent.
Ex..R15	–	Copy of the unclaimed RPAD cover sent to the petitioner, marked by consent.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G. O. Rt. No. 135/AIL/Lab./J/2011, dated 7th July 2011)

NOTIFICATION

Whereas, the Award in I.D. No.15/2007, dated 31-1-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. M.R.F. Limited, Puducherry and Thiru S. Bharathiraja over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Monday, the 31st day of January 2011

I.D. No. 15/2007

S. Bharathiraja (Emp. No. 6),
S/o. M. Singaram,
Vadhanur Post, Main Road,
Thirukanur *Via,*
Puducherry-605 501 .. Petitioner/ Workman.

Versus

The Management of M.R.F. Limited,
P.B. No.1, Eripakkam Village,
Nettapakkam Commune,
Puducherry-605 106 .. Respondent/ Management.

This petition coming before me for final hearing on 31-1-2011 in the presence of Thiru T.Gunasegaran, advocate for the petitioner, Thiruvalargal L.Swaminathan and I.Ilankumar, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G. O. Rt. No. 52/2007/Lab./AIL/J, dated 14-3-2007 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the non-employment of S. Bharathiraja by the management of M/s. M.R.F. Limited, Puducherry is justified or not?

(2) If not what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement would aver that the respondent is a Limited Company registered under the Indian Companies Act, which manufactures tyres of all kinds and started its commercial production in the year 1998. At the time of starting its production, all the workers were designated as "Trainees/ Apprentices" for a paltry wage of ₹ 40 per day and the workers who had I.T.I. qualification were paid ₹ 50 per day. The workers were not given the benefits of E.S.I. coverage or the benefits of PF coverage. After six

months, few workers were given written order of appointment designating them as "Trainees". The management adopted the method of designation as "Trainees/Apprentices" only to deny the benefits of labour welfare legislations and utilising the insecurity in employment, it extracted more than the maximum possible workload from the workers. After two years in or about the year 2001, the workers by name Thiruvalargal (1) B.Sakthivel, (2) K.Deivasigamani, (3) V. Balamurugan, (4) S. Jayaprakash, (5) S. Bharathiraja, (6) P. Anbouradjou, (7) C. Kumaravelan, (8) P. Pachyappan, (9) A. Sivanandhane, (10) S. Srinivasan and (11) P. Mohan, who had I.T.I, qualification, were issued orders placing them on probation. The management did not have certified standing orders at the time of starting its production. But after about 3 years on 11-6-2001, the management handpicked certain workers to come to the Labour Department to give their consent for the certification of the draft of their standing orders. At that time, the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr.V. Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No. 20270/2001 and W.P. No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the Writ Petitions and the management's Writ Appeals Nos. 2043 and 2044 of 2002 against the said petitions, which is still pending.

The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No. 20/2002 sought for a direction not to register the union. During the pendency of the said Writ Petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a Writ Petition No. 1769/2002 was filed against the said registration. In the said Writ Petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No. 24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the Writ Appeal. The petitioner was one such reinstated workers, who has been the member of the M.R.F. Thozhilalar Sangam.

The petitioner joined the service in the respondent's company on 25-3-1998 and he was employed without any written order of appointment being given to him and was paid the rate of ₹ 40 per day. On 1-1-1999 the respondent's company had given a first written order of appointment designating the petitioner as "Apprentice" for a period of 6 months. On the expiry of 6 months period set out in the aforesaid order, he was again issued a second order, dated 1-7-1999 again designating him as an 'Apprentice' for another period of 6 months. Further, after expiry of another 6 months, the petitioner was again issued another order, dated 1-1-2000 designating him as "Apprentice". On 1-7-2000 again another order was issued designating him as "Apprentice". Thereafter no order was communicated to him and when he was terminated for the first time for his membership of the M.R.F. Thozhilalar Sangam, no written order was issued on being reinstated under the orders of the Hon'ble High Court, dated 10-6-2002. The model of standing orders which applies to the petitioner, states that worker cannot be kept as trainee beyond 6 months.

The management through its handpicked men, having formed a trade union and having obtained registration for the same and having affiliated with the INTUC, the Labour Wing of the ruling Congress Party in Pondicherry, entered into a so-called settlement with the said outfit for certification of the standing orders, which standing orders do not apply for the petitioner as the same is as a result of a collusive arrangement with the handpicked men of the opposite party management and same is violated by fraud, collusion and is not a genuine settlement entered into with genuine collective bargaining agent, truly representing the workers. In any event the said settlement being one under section 18(1) of the Industrial Disputes Act, it is not binding on the union in which the petitioner is a member.

The members of M.R.F. Thozhilalar Sangam having been subjected to hostile discrimination and ill treatment and the management unabashedly continuing to flout labour welfare legislation and employing contract labours in direct manufacturing process illegally, the said union decided should sit on a protest fast, to ensure protection of freedom of association of the workers. Accordingly Mr. V. Prakash, advocate, the President of the petitioner's union, sat on a fast at the respondent's company for consecutive 5 days from 11-2-2004 to 15-2-2004. The petitioner was one among the workers who was active in the union activities relating to the fast that took place on 15-2-2004. The petitioner was issued the suspension pending enquiry memo. in English, dated 31-1-2004. He was issued a show cause memo. dated 1-2-2004 in English and the petitioner gave his explanation through an undated letter on 17-2-2004. The petitioner was given the subsistence allowance. Later on 29-2-2004 an enquiry notice was issued to the

petitioner wherein it was stated that the petitioner's explanation was not satisfactory and the management had appointed Mr. K. Babu as an Enquiry Officer and instituted an enquiry. The Enquiry Officer gave his findings on 26-5-2004 by stating that the charges framed against the petitioner were proved. The respondent management issued a second show cause notice, dated 3-6-2004 proposing dismissal of the petitioner from service. Against the said order of dismissal, the petitioner raised an industrial dispute under section 2(A) of the Industrial Disputes Act. The impugned dismissal of the petitioner, dated 15-6-2004 is illegal and unjustified. Hence, he prays to pass an order directing the respondent management to reinstate the petitioner in service with back wages, continuity of service and other consequential benefits and award costs.

3. The respondent filed a common counter statement and contended that the petition is not maintainable either on law or on facts. The various allegations and contentions stated in the claim petition are factually incorrect and the petitioner only to achieve unlawful gains through suppression of material facts had approached the Labour Court with unclean hands. The company at Pondicherry commenced trial production in the year 1998 and manufactured various radial tyres. The company which started with 12 machines has slowly progressed to install nearly 131 machines as on date. As the manufacture of radial tyres is highly technical and is a complicated one and uses logistics control, the workmen takes time to learn the various skills on each machine and the workers have been inducted in phases over the past years. In order to give employment opportunity to the villagers, the respondent recruited the persons from nearby village of Puducherry who do not possess qualification beyond 12th standard. Only raw hands are recruited as Apprentices. The respondent denies that allegation with regard to E.S.I. and PF coverage. As soon as the E.S.I. notification was given all the employees including the Trainees/Apprentices. The Assistant Director of Employment and Training vested with powers convened a meeting of the workmen on 19-9-2001 at the company premises for the purpose of electing a workmen representative for certification of standing orders with their comments and corrections. The respondent management had engaged a maximum of 258 workmen out of which 16 are probationers, 140 are Apprentices and 102 are casuals who are kept under observation to verify their willingness and to ascertain their basic aptitude. On and from 3-1-2001, an agitation commenced in the form of various illegal agitations and undesirable activities. By that time the probationary period of 6 probationers came to an end due to efflux of time and the training of 43 apprentices were determined and with no other alternative 102 casual services were dispensed with. Only at this backdrop, the so-called M.R.F. Thozhilalargal Sangam had filed Writ Petition in W.P.No.20270/2001 and W.P. No. 20591/2001 and the respondent had filed Writ Appeals against the orders passed in the Writ Petitions in W.A.No.2043/2002 and W.A.No.2044/2002 and the same is pending. In the said Writ Appeals, the Hon'ble High Court, Madras had granted stay of reinstating the terminated 49 workmen and other workmen were taken back at their original category and at that time only, the petitioner herein had been reinstated. The respondent further denies that the wages paid are less than the minimum wages. The respondent management always abides by the labour laws and therefore the settlement entered with the union which enjoyed majority cannot be questioned by an isolated person.

The petitioner was suspended from service on 31-1-2004 in contemplation of disciplinary proceedings and the petitioner was issued with a show cause notice on 1-2-2004 followed by an enquiry. After receipt of enquiry report, dated 26-5-2004, the respondent management completely perused the report and was subjectively satisfied that the Enquiry Officer had conducted the enquiry by permitting the petitioner to examine his two witnesses apart from his own deposition. The Enquiry Officer had submitted the enquiry report on 26-5-2004 with an observation that the charges framed against the petitioner are proved beyond reasonable doubt. The second show cause notice was issued on 3-6-2004 to the petitioner alongwith enquiry report and the petitioner has submitted his explanation on 9-6-2004. Based on the past records and enquiry report, the management had arrayed to a conclusion that the petitioner herein is not a fit person to be permitted to continue in service and therefore passed an order of dismissal, dated 11-6-2004. The petitioner has no *locus standi* to claim reinstatement and hence, they pray for dismissal of the industrial dispute.

4. *Now the point for determination is:*

Whether the non-employment of Mr. S. Bharathiraja by the management of M/s. M.R.F. Limited, Puducherry is justified or not?

On point :

5. The contention of the petitioner is that the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr.V. Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers,

who joined union, resulting in filing the W.P. No. 20270/2001 and W.P. No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the writ petitions and the management's writ appeals Nos.2043 and 2044 of 2002 against the said petitions, which is still pending. The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No. 20/2002 sought for a direction not to register the union. During the pendency of the said Writ Petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a Writ Petition No. 1769/2002 was filed against the said registration. In the said Writ Petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No. 24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal.

6. The contention of the respondent is that the petitioner had chosen only to elaborate about the formation of M.R.F. Thozhilalargal Sangam led by its Union President V. Prakash and more specifically concentrated about the orders passed by the Hon'ble High Court, Madras in W.P. No. 20270/2001, W.P. No. 20591/2001 and W.P. No. 19/2002, dated 10-6-2002, though the petitioner is not a party to the writ proceedings. He further submitted that the Division Bench of Hon'ble High Court, Madras by its order, dated 4-1-2008 in W.A. No. 2043 and 2044/2002 was pleased to modify the order in W.P. No.20591/2001 and W.P. No. 19/2002 to the extent that the dismissed/ terminated employees had to approach the Labour Court or the Industrial Tribunal. The learned counsel for the respondent further submitted that in S.L.P. No.6004-6006/2009 against the judgment and order, dated 4-1-2008 in W.A. Nos. 2043 and 2044/2008 of Hon'ble High Court, Madras was preferred by the M.R.F. Thozilalargal Sangam and the Hon'ble Supreme Court by its record of proceedings dismissed the S.L.P. on 12-5-2009.

7. Neither the petitioner nor the respondent has produced the copies of the said judgments of the Hon'ble Supreme Court and Hon'ble High Court, Madras to come to the just decision of the case. In the absence of sufficient records, this court is not in a position to accept the contention of either the petitioner or the respondent.

8. The contention of the petitioner is that he joined the service of the respondent management on 25-3-1998 without any written order and the first written order of appointment was given on 1-1-1999 designating him as Apprentice for a period of six months, he was again issued a second order, dated 1-7-1999 for another period of six months designating as apprentice and on the expiry of next period of six months, he was again issued another order once again designating as Apprentice for a further period of six months on 1-1-2000 and he was again issued another order designating him as Probationary, dated 1-7-2000 and the model standing orders, which applies to him states that a worker cannot be kept as a Trainee beyond six months.

9. In order to prove his claim, the petitioner was examined himself as PW.1, who has stated about the said facts and through him, Ex.P1 to Ex.P10. Ex.P1 is the first appointment order, dated 1-1-1999 issued to him designating as Apprentice, Ex.P2 is the second order, dated 1-7-1999 and Ex.P3 is the third order, dated 1-7-2000 designating him as Probationary.

10. On the side of the respondent, it is submitted that clause 3 of the certified standing orders of respondent company speaks about the classification of workman and clause 3.6 deals with apprenticeship under the Apprenticeship Act, 1961, which runs as follows:-

> "..... Company Training Scheme/Trainee means a learner who is paid stipend and whose terms and conditions are governed by the provisions of the Apprentices Act, 1961 and the amendments thereof or one who is recruited to undergo apprenticeship as per company's scheme either as Production Apprentice or Engineering Apprentice or Apprentice for Service Department. The apprenticeship period will be for 42 months comprising 4 spells, the first spell is for six months and the remaining 3 spells each are for one year duration and the company is not obliged to employ after the conclusion of their apprenticeship. At the expiry of any spell each training will be assessed and evaluated and on satisfactory completion of the training in each spell, the trainee will be put on to training for next spell. On completion of the total apprenticeship period the services will stand automatically terminated. However, they may be considered for the post of Probationer on satisfactory completion of training by the company at its discretion depending upon the exigencies and vacancy position. The status as an apprentice will not change until it is changed by the company in writing ....".

11. As per clause 3.6 of apprenticeship under the Apprenticeship Act, 1961, the apprenticeship period will be 42 months comprising four spells, the first spell is six months and the remaining three spells each are for one year and accordingly, the respondent company issued Ex.P1 to Ex.P3 to the petitioner. Hence, there is no violation of standing orders by the respondent company in issuing the appointment order to the petitioner, as stated by the petitioner.

12. The next contention of the petitioner is that since he was active member in the M.R.F. Thozhilalar Sangam and since he was participated in the activities on the said union, he was terminated from service by raising false allegations against him.

13. *Per contra,* the contention of the respondent is that during the period of training, the petitioner had indulged in acts of indiscipline, insubordination, using filthy and obnoxious language, aiding and abetting the co-workers to squat, instigating the other workers were all proved in the enquiry proceedings and hence he was terminated from service. In order to support his claim, the learned counsel for the respondent has relied upon the following decisions:-

2011 LLR 51

Dismissal from service – Of the appellant Manager (Sales) for threatening and abusing his superior – He was dismissed from service for misconduct duly proved in disciplinary enquiry – His writ petition against punishment was dismissed – Hence this writ appeal – In view of gravity of charge against the appellant, the punishment of dismissal cannot be stated to be disproportionate to the misconduct – Principles of natural justice were followed and proper opportunity was given to him – No ground found to interfere with the order of dismissal from service as upheld by learned single Judge.

2010 LLR 600

Industrial Disputes Act, 1947 – Section 11A, Power of the Labour Court/Industrial Tribunal to give appropriate relief in cases of dismissal or discharge of the workman – Well settled law – Power under section 11 is not an appellate power – Exercise only when punishment imposed is shockingly disproportionate to charges proved in Departmental Inquiry – Punishment of putting him six stages down in pay scale for charge of misappropriation – Not shockingly disproportionate to the charges proved.

2010 LLR 744

Constitution of India, 1950 – Enquiry – Validity of – Principles of natural justice have been followed by the Enquiry Officer – Enquiry cannot be faulted on any ground and the findings are in no manner, perverse – No case is made out for interference with the said orders under Article 226 of the Constitution of India.

2010 LLR 993

Departmental proceedings – Judicial review of – Scope of – Judicial review is matters of disciplinary proceedings – Is to find out whether the findings are perverse or unreasonable – Writ court recorded that there is sufficient evidence to support the charges – There is no legal or other infirmity in the order under appeal – Appeal dismissed.

Departmental proceedings – Enquiry report not furnished – In fact the disciplinary authority has not given any findings of its own in respect of charges levelled – Enquiry report annexed with the second show cause notice - No prejudice caused to appellant.

(2008) 5 MLJ 733

When the charge of habitual absence against the employee was proved and the competent authority/ employer imposed a proper punishment, it is not open to the Central Administrative Tribunal to interfere with the quantum of punishment on the premises that the charge of habitual absence of the employee was not grave. Such order of the CAT is clearly erroneous and is liable to be set aside.

(2008)3 MLJ 959 (SC)

Punishment – Of removal from service – Imposed on respondent/teacher on ground of misconduct as he physically assaulted Principal of School – Order of Tribunal quashing removal order and reducing punishment as being disproportionate – Same upheld by High Court in writ petition – Appeal – No good ground for Tribunal to interfere with punishment of removal imposed on respondent – Impugned order of High Court and Tribunal set aside – Appeal allowed.

2005 (2) CTC 730

..... Workman should have pleaded before employer at second show cause notice stage that proposed punishment was harsh and disproportionate to proved misconduct and that employer acted with *mala fide* – (i) Reading of various decisions would show that the following principles of law is laid down; The Tribunal is empowered to enquiry as to whether the enquiry conducted was fair and any principles of natural justice has been violated in the conduct of the enquiry; (ii) The Tribunal is empowered to enquiry as to whether the management *bona fide* came to the conclusion that the dismissal another punishment for the one which is sought to be meted out except when it finds that action of the management is shockingly disproportionate..... Enquiry was fair and proper and charges were proved and the Tribunal should have approved the action of the employer in dismissing workman.

2001 LLR 587

Industrial Disputes Act, 1947 – Section 22 – Prohibition of strikes and lock-outs – Strike in a hospital where public utility services are rendered will contravene the provisions of section 22 – Such a strike would be *per se* illegal – Strike has been

totally prohibited in utility service by the notification issued by the State Government – The strike resorted to by the workmen of the hospital is in contravention of the said prohibitory orders of the State Government issued under section 22 of the Industrial Disputes Act and, therefore, this strike is *per se* illegal as it violates the said notification and the prohibition orders.

Dismissal – Of hospital employees for resorting to and instigation for illegal strike - Before initiating disciplinary proceedings, it is not necessary that such a strike be declared as illegal.

2001 LLR 1213

Dismissal from service of Assistant Branch Manager – Who was committed various acts of omission and commission during the period of his posting as enumerated in charge sheet – Disciplinary proceedings initiated – Disciplinary authority dismissed the petitioner from service on the basis of enquiry report – Appellate authority by a reasoned order rejected the appeal – Full opportunity is defend himself given in the enquiry – Hence, no illegality proceedings or order –Dismissal from service of petitioner held not illegal.

2001 LLR 401 (MP HC)

Dismissal of bus conductor - Checking staff found that out of 23 passengers travelling in the bus 6 were travelling without ticket – The bus has covered 34 kms. From the place wherefrom 6 passengers had boarded the bus – Enquiry held – Charges proved – Dismissal of the conductor ordered – Challenged – Labour Court vitiated enquiry – Ordered reinstatement without back wages – Industrial Court directed reinstatement of the conductor with full back wages – Writ petition by the management – Corporation – High Court quashed the orders of Labour Court and Industrial Court – Dismissal as ordered by the Corporation upheld – A dishonest person could not be allowed to continue in employment – The conductor has lost the confidence.

2001 LLR 1154 (SC)

..... In such an event if the appellant – Corporation loses its confidence *vis-a-vis* in the employee it will be neither proper nor fair on the part of the court to substitute the finding and confidence of the employee with that of its own by allowing reinstatement – The misconduct stands proved and in such a situation by reason of the gravity of the offence the Labour Court cannot exercise its discretion and alter the punishment – Also High Court was in error in dismissing the writ summarily – The termination order as passed by the Appellant Corporation is restored.

2001 LLR 1237(Kar. HC)

Loss of confidence – When a bus conductor misappropriates money as collected – His reinstatement as awarded by the Labour Court and Learned Single Judge – Cannot be sustained.

2010 LLR 913 (Guj. HC)

Dismissal – From service of bus conductor for misconduct of receiving fare and not issuing tickets – Challenged by petitioner – Conductor – For proved misconduct – High Court is of considered opinion – Punishment of dismissal is not in any way disproportionate to the charges levelled against the conductor, particularly taking into account the past record of service – There cannot be any misplaced sympathy in such matters.

2009(5)CTC 160

Departmental Proceedings – Punishment – Past misconduct and record of service – Relevancy of – No need to mention in notice calling for further representation.

(2008) 3 SCC 310

Service law – Probation/Probationer – Termination – Grounds – Unsatisfactory probation – Authority competent to direct termination in case of – Need to give reasons/explanation, if any – Held, assessment of probation has to be made by appointing authority itself – The authority is however not required to give reason for termination except to inform employee that his performance was found unsatisfactory.

14. In order to prove the misconduct of the petitioner, the respondent has marked the complaints, received from Production Supervisor and Shift Foreman as Ex.R1 and Ex.R2 respectively. Ex.R1 and Ex.R2 were received from the staff of the respondent management for the misbehaviour committed by the petitioner during the office hours. Those documents are not challenged by the petitioner.

15. The final contention of the learned counsel for the petitioner is that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner and he has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice and moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings and in fact the petitioner has not committed any misconduct as alleged by the respondent, but the management had taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer the management dismissed the petitioner.

16. The learned counsel for the respondent would submit that they have followed the principles of natural justice while charging the petitioner and conducting the domestic enquiry by a neutral Inquiry Officer and on proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice and even in the domestic enquiry, the petitioner had been allowed to be assisted by their co-employee. The petitioner has been given fair chance to cross-examine the witnesses and the Inquiry Officer on considering the documents as well the evidences of the management witnesses, had rightly come to the conclusion that the charges of the petitioner were proved and on the conclusion of the report submitted by the Inquiry Officer, the petitioner has been terminated from his services by way of punishment for the misconduct committed by him and hence, there is no scope to intervene in the order of this management by the Labour Court.

17. At this stage, when I peruse the domestic enquiry report which has been marked as Ex.R5, relating to the petitioner, we can understand that the petitioner was advised to participate in the enquiry, which was scheduled to be conducted from 13-3-2004 to 27-4-2004. On the side of the respondent, four witnesses were examined and they were cross-examined by the petitioner. On side of the petitioner, no oral and documentary evidence was adduced, though sufficient opportunity was given to him. On 27-4-2004 the enquiry was closed. The Enquiry Officer based on the evidence of the witnesses and the documents available on records, found that the charges framed against the petitioner are proved and accordingly, he submitted his report to the respondent management. Then based on the enquiry report, the respondent management issued a second show cause notice under Ex.R6 calling for his explanation. The petitioner submitted his written explanation under Ex.R7 and since the explanation submitted by the petitioner was not satisfactory, the respondent management dismissed the petitioner from service.

18. Hence on perusal of Ex.R5 and other documents filed on the side of the respondent, it is evident that the petitioner was given fair opportunity to defend his case and the respondent has correctly followed the procedure for conducting the domestic enquiry as contemplated under labour law. Hence, the enquiry conducted by the respondent management is fair and proper.

19. The learned counsel for the respondent has pointed out the Apprenticeship order under Ex.P1 to Ex.P3, which runs as follows:-

(a) You will be subject to the Certified Standing Orders and regulations as and when become applicable or amended or extended from time to time.

(b) On completion of the apprenticeship period, your services with us as an apprentice will stand automatically terminated.

(c) Should be guilty of any misconduct during the period of apprenticeship, you will be summarily dismissed from apprenticeship without notice or compensation *in lieu of* notice.

(d) The company does not guarantee any automatic confirmation in services at the end of apprenticeship period.

20. The above orders state that on completion of the apprenticeship period, the petitioners' services will stand automatically terminated. Hence, it is the implied factum that the petitioner cannot claim right over the appointment since the appointment itself is not a permanent one or does not guarantee any automatic confirmation in service. In this case, the petitioner on accepting the above terms and conditions of the order of respondent company, has joined as apprentice and during the period of apprentice, he had committed misconducts such as indiscipline, insubordination and aiding and abetting the co-workers to squat, instigating the other workers, which were proved in the domestic enquiry, conducted by the respondent management and hence, the respondent has taken action against the petitioner by terminating him from service, which is not against law.

21. The misconducts committed by the petitioner have been proved by way of conducting the enquiry and the said misconducts are very grave in nature during the period of apprentice. The respondent management has rightly taken the decision by terminating them from service. The decisions cited by the learned counsel for the respondent are squarely applicable to the present facts and circumstances of the case. However, the documents marked under Ex.P1 to Ex.P10 on the side of the petitioner, are not supported to his claim. Hence, the petitioner is not entitled for reinstatement with continuity of service and back wages. But at the same time, the petitioner has rendered service in the respondent company for more than three years. He was hailing from poor families and he had been walking to this court for the past four years. Hence, considering the age of the petitioner and his family circumstances, the respondent is directed to pay a monetary compensation of ₹ 10,000 to the petitioner. Accordingly, this point is answered.

22. In the result, the petitioner is not entitled for reinstatement with continuity of service and back wages. However, the respondent is directed to pay a sum of ₹ 10,000 towards the monetary compensation to the petitioner. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner:

PW.1 — 22-10-2010 S. Bharathiraja

List of witnesses examined for the respondent: Nil

List of exhibits marked for the petitioner:

Ex.P1 — 1-1-1999 Apprenticeship order

Ex.P2 — 1-7-1999 Apprenticeship order

Ex.P3 — 1-7-2000 Probation appointment order

Ex.P4 — 1-2-2004 Show cause notice

Ex.P5 — – Written explanation given by the petitioner.

Ex.P6 — 29-2-2004 Enquiry notice

Ex.P7 — 3-6-2004 Second show cause notice

Ex.P8 — – Written explanation given by the petitioner.

Ex.P9 — 11-6-2004 Dismissal order

Ex.P10— 9-10-2006 Failure report issued by the Labour Officer (Conciliation), Pondicherry.

List of exhibits marked for the respondent by consent :

Ex.R1 — 30-1-2004 Complaint from the Production Supervisor, marked by consent.

Ex.R2 — 30-1-2004 Complaint from the Shift Foreman, marked by consent.

Ex.R3 — 1-2-2004 Show cause notice, marked by consent.

Ex.R4 — – Written explanation given by the petitioner, marked by consent.

Ex.R5 — 26-5-2004 Enquiry report, marked by consent.

Ex.R6— 3-6-2004 Second show cause notice, issued to the petitioner, marked by consent.

Ex.R7 — 9-6-2004 Written explanation marked by consent.

Ex.R8 — 27-2-2006 Petition filed under section 2A before the Labour Officer (Conciliation), Puducherry, marked by consent.

Ex.R9 — 24-7-2006 Counter statement filed by the respondent/management, marked by consent.

Ex.R10 — – Relevant Tamil Version of the Certified Standing Orders, marked by consent.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G. O. Rt. No. 136/AIL/Lab./J/2011, dated 7th July 2011)

NOTIFICATION

Whereas, the Award in I. D. No. 7/2007, dated 31-1-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. M.R.F. Limited, Puducherry and Thiru K. Sivakumar over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Monday, the 31st day of January 2011

I. D. No. 7/2007

K.Sivakumar (Emp. No. 70090)
S/o.G.Krishnamoorthy
No. 19, Pillaiyar Koil Street,
Sooramangalam, Pallineliyanur Post,
Pondicherry-605 107 .. Petitioner

Versus

The Management of M.R.F. Limited,
P.B. No. 1, Eripakkam Village,
Nettapakkam Commune,
Pondicherry-605 106. .. Respondent

This petition coming before me for final hearing on 31-1-2011 in the presence of Thiru T. Gunasegaran, advocate for the petitioner, Thiruvalargal L. Swaminathan and I. Ilankumar, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G. O. Rt. No. 44/2007/Lab/AIL/J, dated 14-3-2007, of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.*

(1) Whether the non-employment of K. Sivakumar by the management of M/s. M.R.F. Limited, Puducherry is justified or not?

(2) If not what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement would aver that the respondent is a Limited Company registered under the Indian Companies Act, which manufactures tyres of all kinds and started its commercial production in the year 1998. At the time of starting its production, all the workers were designated as "Trainees/ Apprentices" for a paltry wage of ₹ 40 per day and the workers who had I.T.I. qualification were paid ₹ 50 per day. The workers were not given the benefits of E.S.I. coverage or the benefits of Provident Fund coverage. After six months, few workers were given written order of appointment designating them as "Trainees". The management adopted the method of designation as "Trainees/Apprentices" only to deny the benefits of labour welfare legislations and utilising the insecurity in employment, it extracted more than the maximum possible workload from the workers. After two years in or about the year 2001, the workers by name Thiruvalargal : (1) B. Sakthivel, (2) K. Deivasigamani, (3) V. Balamurugan, (4) S. Jayaprakash, (5) S. Bharathiraja, (6) P. Anbouradjou (7) C.Kumaravelan, (8) P. Pachyappan, (9) A. Sivanandhane, (10) S. Srinivasan and (11) P. Mohan, who had I.T.I. qualification, were issued orders placing them on probation. The management did not have certified standing orders at the time of starting its production. But after about 3 years on 11-6-2001, the management handpicked certain workers to come to the Labour Department to give their consent for the certification of the draft of their standing orders. At that time, the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr. V. Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No. 20270/2001 and W.P. No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the Writ Petitions and the management's Writ Appeals Nos. 2043 and 2044 of 2002 against the said petitions, which is still pending.

The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No.20/2002 sought for a direction not to register the union. During the pendency of the said Writ Petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a Writ Petition No. 1769/2002 was filed against the said registration. In the said Writ Petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No. 24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the Writ Appeal. The petitioner was one such reinstated workers, who has been the member of the M.R.F. Thozhilalar Sangam.

The petitioner joined the service in the respondent's factory on 17-11-1998 and he was employed without any written order of appointment being given to him and was paid the rate of ₹ 40 per day. On 1-7-1999 the respondent's factory had given a first written order of appointment designating the petitioner as "Apprentice" for a period of 6 months. On the expiry of 6 months period set out in the aforesaid order, he was again issued a second order, dated 1-1-2000 again designating him as an 'Apprentice' for another period of 6 months. Further, after expiry of another 6 months, the petitioner was again issued another order, dated 1-7-2000 designating him as "Apprentice". On 1-1-.2001 again another order was issued designating him as "Apprentice". Thereafter no order was communicated to him and when he was terminated for the first time for his membership of the M.R.F. Thozhilalar Sangam, no written order was issued on being reinstated under the orders of the Hon'ble High Court, dated 10-6-2002. The model of Standing Orders which applies to the petitioner, states that worker cannot be kept as trainee beyond 6 months.

The management through its handpicked men, having formed a trade union and having obtained registration for the same and having affiliated with the INTUC, the labour wing of the ruling Congress Party in Pondicherry, entered into a so called settlement with the said outfit for

certification of the standing orders, which standing orders do not apply for the petitioner as the same is as a result of a collusive arrangement with the handpicked men of the opposite party management and same is violated by fraud, collusion and is not a genuine settlement entered into with genuine collective bargaining agent, truly representing the workers. In any event the said settlement being one under section 18(1) of the Industrial Disputes Act, it is not binding on the union in which the petitioner is a member.

The members of M.R.F. Thozhilalar Sangam having been subjected to hostile discrimination and ill treatment and the management unabashedly continuing to flout labour welfare legislation and employing contract labours in direct manufacturing process illegally, the said union decided should sit on a protest fast, to ensure protection of freedom of association of the workers. Accordingly Mr. V. Prakash, advocate, the President of the petitioner's union, sat on a fast at the respondent's factory for consecutive 5 days from 11-2-2004 to 15-2-2004. The petitioner was one among the workers who was active in the union activities relating to the fast that took place on 15-2-2004. The petitioner was issued a suspension pending enquiry order, dated 16-9-2002 and the petitioner was issued a show cause notice on 20-9-2002, after 4 days of issuing the suspension order. The petitioner was issued an enquiry notice, dated 25-10-2002 stating that the enquiry would be held on 31-10-2002 wherein it was stated that the petitioner's reply was not satisfactory and the management had appointed Ms.Usha as an Enquiry Officer and instituted an enquiry. On 31-10-2002, the petitioner denied the charges before the Enquiry Officer and stated that he had already sent an explanation on 1-10-2002 through a registered letter.

In the enquiry that was held on 18-11-2002, one Mr. S. Bharathi, Senionr Production (Tyre curing) was examined as PW.1 and his report was marked as Ex.P1. On 2-12-2002 Mr. Sam John, Production Supervisor was examined as PW.2 and Mr.Ilamparithi, Quality Assurance Supervisor was examined as PW.3. The attendance register, dated 16-9-2002 was marked as Ex.P2. The letter and report of the Quality Supervisor Mr.llamparithi were marked as Ex.P3 and P4. Mr.P.Oulaganathan, Primary Inspector was examined as PW.4 and T. V. Prakash, Tyre Construction Assistant was examined as PW.5 and his report was marked as Ex.P5. On 28.12.2002 the petitioner was examined as RW.1 and marked as Ex.R1. On 4-1-2003, the petitioner examined witness on his behalf namely Mr. Mahadevan and Mr. G. Gopal as RW.2 and RW.3 respectively. In the deposition of RW.2 Mr. Mahadevan has stated that the petitioner spoke with Mr.Sam John, Supervisor about something. During the examination, RW.2 has no where stated about the alleged incident in the charge sheet. Further RW.3 Mr.Gopi has clearly stated that Mr.Sam John, Supervisor was awling the tyres and he used to train the trainees about awling the tyres. The enquiry proceedings were concluded on 4-1-2003.

The very non-mentioning of the name of PW.1 in the show cause memo, dated 20-9-2002 and non-furnishing of his alleged report, which is clearly shows that the exhibit P1 was fabricated for the case and PW.1 is not really a witness to the alleged charges but a doctored and tutored witness. The petitioner having studied only up to 11th standard and having no previous experience in cross-examination obviously had his own limitation and denial of assistance of a co-employee by not informing the petitioner of his right to such assistance, is clearly a denial of reasonable opportunity for the petitioner to defend himself. The Enquiry Officer gave his findings on 9-12-2003 accepting the management witnesses deposition and holding it against the petitioner for not examining any witness on his behalf. The management not accepting the petitioner's explanation issued an order of dismissal, dated 4-5-2004 to the petitioner. Against the said order of dismissal, the petitioner raised an industrial disputes under section 2(A) of the Industrial Disputes Act. The management filed its counter statement and the Conciliation Officer issued the conciliation failure report on 18-10-2006 resulting in the present reference.

The impugned dismissal of the petitioner dated, 15-6-2004 is illegal and unjustified. Hence, the petitioner prays to pass an order directing the respondent-management to reinstate the petitioner in service with back wages, continuity of service and other consequential benefits and award costs.

3. The respondent filed a common counter statement and contended that the petition is not maintainable either on law or on facts. The factory at Pondicherry commenced trial production in the year 1998 and manufactured various radial tyres. The factory which started with 12 machines has slowly progressed to install nearly 131 machines as on date. As the manufacture of radial tyres is highly technical and is a complicated one and uses logistics control, the workmen takes time to learn the various skills on each machine and the workers have been inducted in phases over the past years. In order to give employment opportunity to the villagers, the respondent recruited the persons from nearby village of Puducherry who do not possess qualification beyond 12th standard. Only raw hands are recruited as apprentices. As soon as the E.S.I. notification was given all the employees including the trainees/apprentices. The Assistant Director of Employment and Training vested with powers convened a meeting of the workmen on 19-9-2001 at the factory premises for the purpose of electing a workmen representative for certification of standing orders with their comments and corrections. The respondent management had engaged a maximum of 258 workmen out of which 16 are probationers, 140 are apprentices and 102 are casuals who are kept under observation to verify their willingness and to ascertain

their basic aptitude. On and from 3-1-2001, an agitation commenced in the form of various illegal agitations and undesirable activities. By that time the probationary period of 6 probationers came to an end due to efflux of time and the training of 43 apprentices were determined and with no other alternative 102 casual services were dispensed with. Only at this backdrop, the so called M.R.F. Thozhilalargal Sangam had filed Writ Petition in W.P. No. 20270/2001 and W.P. No. 20591/2001 and the respondent had filed Writ Appeals against the orders passed in the Writ Petitions in W.A. No. 2043/2002 and W.A. No. 2044/2002 and the same is pending. In the said Writ Appeals, the Hon'ble High Court, Madras had granted stay of reinstating the terminated 49 workmen and other workmen were taken back at their original category and at that time only, the petitioner herein had been reinstated.

The petitioner was suspended from service on 16-9-2002 in contemplation of disciplinary proceedings and the petitioner was issued with a show cause notice on 20-9-2002 followed by an enquiry. After receipt of enquiry report, dated 9-12-2003, the respondent management completely perused the report and was subjectively satisfied that the Enquiry Officer had conducted the enquiry by permitting the petitioner to examine his two witnesses apart from his own deposition. The Enquiry Officer had submitted the enquiry report on 9-12-2003 with an observation that the charges framed against the petitioner are proved beyond reasonable doubt. The petitioner was paid stipend at the rate of ₹ 75 per day. The petitioner has no *locus standi* to claim reinstatement even remotely as the respondent management had acted in a fair and judicious manner based on the outcome of the enquiry report, dated 9-12-2003 and to the past record of the claim petitioner which can be proved through documentary evidence.

4. *Now the point for determination is :*

"Whether the non-employment of Mr. K. Sivakumar by the management of M/s. M.R.F. Limited, Puducherry is justified or not?"

On point :

5. The contention of the petitioner is that the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr. V. Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the W.P. No. 20270/2001 and W.P. No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the Writ Petitions and the management's Writ Appeals Nos. 2043 and 2044 of 2002 against the said petitions, which is still pending. The management thereafter set up its nominees to form a trade union and genuine union filing W.P. No. 20/2002 sought for a direction not to register the union. During the pendency of the said Writ Petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a Writ Petition No. 1769/2002 was filed against the said registration. In the said Writ Petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed W.P. No. 24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the writ appeal.

6. The contention of the respondent is that the petitioner had chosen only to elaborate about the formation of M.R.F. Thozhilalargal Sangam led by its Union President V. Prakash and more specifically concentrated about the orders passed by the Hon'ble High Court, Madras in W.P. No. 20270/2001, W.P. No. 20591/2001 and W.P. No. 19/2002, dated 10-6-2002, though the petitioner is not a party to the writ proceedings. He further submitted that the Division Bench of Hon'ble High Court, Madras by its order, dated 4-1-2008 in W.A. No. 2043 and 2044/2002 was pleased to modify the order in W.P. No. 20591/2001 and W.P. No. 19/2002 to the extent that the dismissed/ terminated employees had to approach the Labour Court or the Industrial Tribunal. The learned counsel for the respondent further submitted that in S.L.P. No.6004-6006/2009 against the judgment and order, dated 4-1-2008 in W.A. Nos. 2043 and 2044/2008 of Hon'ble High Court, Madras was preferred by the M.R.F. Thozilalargal Sangam and the Hon'ble Supreme Court by its record of proceedings dismissed the S.L.P. on 12-5-2009.

7. Neither the petitioner nor the respondent has produced the copies of the said judgments of the Hon'ble Supreme Court and Hon'ble High Court, Madras to come to the just decision of the case. In the absence of sufficient records, this court is not in a position to accept the contention of either the petitioner or the respondent.

8. The contention of the petitioner is that he joined the service of the respondent management on 17-11-1998 without any written order and the first written order of appointment was given on 1-7-1999 designating him as apprentice for a period of six months, he was again issued a second order, dated 1-1-2000 for another period of six months designating as apprentice and on the expiry of next period of six months, he was again issued

another order once again designating as apprentice for a further period of six months on 1-7-2000 and he was again issued another order designating him as apprentice, dated 1-1-2001 and the model Standing Orders, which applies to him states that a worker cannot be kept as a trainee beyond six months.

9. In order to prove his claim, the petitioner was examined himself as PW1, who has stated about the said facts and through him, Ex. P1 to Ex. P9. Ex. P1 is the first appointment order, dated 1-7-1999 issued to him designating as apprentice, Ex.P2 is the second order, dated 1-1-2000 and Ex. P3 is the third order, dated 1-7-2000.

10. On the side of the respondent, it is submitted that clause 3 of the Certified Standing Orders of respondent company speaks about the classification of workman and clause 3.6 deals with apprenticeship under the Apprenticeship Act, 1961, which runs as follows:-

> "..... Company Training Scheme/Trainee means a learner who is paid stipend and whose terms and conditions are governed by the provisions of the Apprentices Act, 1961 and the amendments thereof or one who is recruited to undergo apprenticeship as per company's scheme either as production apprentice or engineering apprentice or apprentice for Service Department. The apprenticeship period will be for 42 months comprising 4 spells, the first spell is for six months and the remaining 3 spells each are for one year duration and the company is not obliged to employ after the conclusion of their apprenticeship. At the expiry of any spell each training will be assessed and evaluated and on satisfactory completion of the training in each spell, the trainee will be put on to training for next spell. On completion of the total apprenticeship period the services will stand automatically terminated. However, they may be considered for the post of probationer on satisfactory completion of training by the company at its discretion depending upon the exigencies and vacancy position. The status as an apprentice will not change until it is changed by the company in writing.... ...."

11. As per clause 3.6 of apprenticeship under the Apprenticeship Act, 1961, the apprenticeship period will be 42 months comprising four spells, the first spell is six months and the remaining three spells each are for one year and accordingly, the respondent company issued Ex.P1 to Ex.P3 to the petitioner. Hence, there is no violation of Standing Orders by the respondent company in issuing the appointment order to the petitioner, as stated by the petitioner.

12. The next contention of the petitioner is that since he was active member in the M.R.F. Thozhilalar Sangam and since he was participated in the activities on the said union, he was terminated from service by raising false allegations against him.

13. *Per contra*, the contention of the respondent is that during the period of training, the petitioner had indulged in acts of indiscipline, insubordination, using filthy and obnoxious language, aiding and abetting the co-workers to squat, instigating the other workers were all proved in the enquiry proceedings and hence he was terminated from service. In order to support his claim, the learned counsel for the respondent has relied upon the following decisions:-

2011 LLR 51

Dismissal from service – Of the appellant Manager (Sales) for threatening and abusing his superior – He was dismissed from service for misconduct duly proved in disciplinary enquiry – His writ petition against punishment was dismissed – Hence this writ appeal – In view of gravity of charge against the appellant, the punishment of dismissal cannot be stated to be disproportionate to the misconduct – Principles of natural justice were followed and proper opportunity was given to him – No ground found to interfere with the order of dismissal from service as upheld by learned single Judge.

2010 LLR 600

Industrial Disputes Act, 1947 – Section 11A, Power of the Labour Court/Industrial Tribunal to give appropriate relief in cases of dismissal or discharge of the workman – Well settled law – Power under section 11 is not an appellate power – Exercise only when punishment imposed is shockingly disproportionate to charges proved in Departmental Inquiry – Punishment of putting him six stages down in pay scale for charge of misappropriation – Not shockingly disproportionate to the charges proved.

2010 LLR 744

Constitution of India, 1950 – Enquiry – Validity of – Principles of natural justice have been followed by the Enquiry Officer – Enquiry cannot be faulted on any ground and the findings are in no manner, perverse – No case is made out for interference with the said orders under Article 226 of the Constitution of India.

2010 LLR 993

Departmental proceedings – Judicial review of – Scope of – Judicial review is matters of disciplinary proceedings – Is to find out whether the findings are perverse or unreasonable – Writ court recorded that there is sufficient evidence to support the charges – There is no legal or other infirmity in the order under appeal – Appeal dismissed.

Departmental proceedings – Enquiry report not furnished – In fact the disciplinary authority has not given any findings of its own in respect of charges levelled – Enquiry report annexed with the second show cause notice - No prejudice caused to appellant.

(2008) 5 MLJ 733

When the charge of habitual absence against the employee was proved and the competent authority/ employer imposed a proper punishment, it is not open to the Central Administrative Tribunal to interfere with the quantum of punishment on the premises that the charge of habitual absence of the employee was not grave. Such order of the CAT is clearly erroneous and is liable to be set aside.

(2008)3 MLJ 959 (SC)

Punishment – Of removal from service – Imposed on respondent/teacher on ground of misconduct as he physically assaulted Principal of School – Order of Tribunal quashing removal order and reducing punishment as being disproportionate – Same upheld by High Court in writ petition – Appeal – No good ground for Tribunal to interfere with punishment of removal imposed on respondent – Impugned order of High Court and Tribunal set aside – Appeal allowed.

2005 (2) CTC 730

..... Workman should have pleaded before employer at second show cause notice stage that proposed punishment was harsh and disproportionate to proved misconduct and that employer acted with *mala fide* – (i) Reading of various decisions would show that the following principles of law is laid down; The Tribunal is empowered to enquiry as to whether the enquiry conducted was fair and any principles of natural justice has been violated in the conduct of the enquiry; (ii) The Tribunal is empowered to enquiry as to whether the management *bona fide* came to the conclusion that the dismissal another punishment for the one which is sought to be meted out except when it finds that action of the management is shockingly disproportionate..... Enquiry was fair and proper and charges were proved and the Tribunal should have approved the action of the employer in dismissing workman.

2001 LLR 587

Industrial Disputes Act, 1947 – Section 22 – Prohibition of strikes and lock-outs – Strike in a hospital where public utility services are rendered will contravene the provisions of section 22 – Such a strike would be *per se* illegal – Strike has been totally prohibited in utility service by the notification issued by the State Government – The strike resorted to by the workmen of the hospital is in contravention of the said prohibitory orders of the State Government issued under section 22 of the Industrial Disputes Act and, therefore, this strike is *per se* illegal as it violates the said notification and the prohibition orders.

Dismissal – Of hospital employees for resorting to and instigation for illegal strike - Before initiating disciplinary proceedings, it is not necessary that such a strike be declared as illegal.

2001 LLR 1213

Dismissal from service of Assistant Branch Manager – Who was committed various acts of omission and commission during the period of his posting as enumerated in charge sheet – Disciplinary proceedings initiated – Disciplinary authority dismissed the petitioner from service on the basis of enquiry report – Appellate authority by a reasoned order rejected the appeal – Full opportunity is defend himself given in the enquiry – Hence, no illegality proceedings or order –Dismissal from service of petitioner held not illegal.

2001 LLR 401 (MP HC)

Dismissal of bus conductor - Checking staff found that out of 23 passengers travelling in the bus 6 were travelling without ticket – The bus has covered 34 kms. From the place wherefrom 6 passengers had boarded the bus – Enquiry held – Charges proved – Dismissal of the conductor ordered – Challenged – Labour Court vitiated enquiry – Ordered reinstatement without back wages – Industrial Court directed reinstatement of the conductor with full back wages – Writ petition by the management – Corporation – High Court quashed the orders of Labour Court and Industrial Court – Dismissal as ordered by the Corporation upheld – A dishonest person could not be allowed to continue in employment – The conductor has lost the confidence.

2001 LLR 1154 (SC)

..... In such an event if the appellant – Corporation loses its confidence *vis-a-vis* in the employee it will be neither proper nor fair on the part of the court to substitute the finding and confidence of the employee with that of its own by allowing reinstatement – The misconduct stands proved and in such a situation by reason of the gravity of the offence the Labour Court cannot exercise its discretion and alter the punishment – Also High Court was in error in dismissing the writ summarily – The termination order as passed by the Appellant Corporation is restored.

2001 LLR 1237(Kar. HC)

Loss of confidence – When a bus conductor misappropriates money as collected – His reinstatement as awarded by the Labour Court and Learned Single Judge – Cannot be sustained.

2010 LLR 913 (Guj. HC)

Dismissal – From service of bus conductor for misconduct of receiving fare and not issuing tickets – Challenged by petitioner – Conductor – For proved

misconduct – High Court is of considered opinion – Punishment of dismissal is not in any way disproportionate to the charges levelled against the conductor, particularly taking into account the past record of service – There cannot be any misplaced sympathy in such matters.

2009(5)CTC 160

Departmental Proceedings – Punishment – Past misconduct and record of service – Relevancy of – No need to mention in notice calling for further representation.

(2008) 3 SCC 310

Service law – Probation/Probationer – Termination – Grounds – Unsatisfactory probation – Authority competent to direct termination in case of – Need to give reasons/explanation, if any – Held, assessment of probation has to be made by appointing authority itself – The authority is however not required to give reason for termination except to inform employee that his performance was found unsatisfactory.

14. In order to prove the misconduct of the petitioner, the respondent has marked the warning letters issued to the petitioner as Ex.R12 to Ex.R14. A perusal of Ex.R12 and Ex.P13 reveals that the petitioner was issued warning notices for his absent from work without information. Ex.R15 Warning notice has been issued to the petitioner for causing damage to the tyre belonging to the respondent company. Ex.R12 to Ex.R14 are not challenged by the petitioner.

15. The final contention of the learned counsel for the petitioner is that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner and he has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice and moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings and in fact the petitioner has not committed any misconduct as alleged by the respondent, but the management had taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer the management dismissed the petitioner.

16. The learned counsel for the respondent would submit that they have followed the principles of natural justice while charging the petitioner and conducting the domestic enquiry by a neutral Inquiry Officer and on proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice and even in the domestic enquiry, the petitioner had been allowed to be assisted by their co-employee. The petitioner has been given fair chance to cross-examine the witnesses and the Inquiry Officer on considering the documents as well the evidences of the management witnesses, had rightly come to the conclusion that the charges of the petitioner were proved and on the conclusion of the report submitted by the Inquiry Officer the petitioner has been terminated from his services by way of punishment for the misconduct committed by him and hence, there is no scope to intervene in the order of this management by the Labour Court.

17. At this stage when I peruse the domestic enquiry report which has been marked as Ex.R3, relating to the petitioner, we can understand that the petitioner was advised to participate in the enquiry, which was scheduled to be conducted from 31-10-2002 to 4-1-2003 and the petitioner was not present in two hearings and then he participated in the enquiry proceedings. On the side of the respondent, five witnesses were examined and they were cross-examined by the petitioner and posted to 18-12-2002 for examination of witnesses on the side of the petitioner. Since the petitioner was not appeared on 18-12-2002, the enquiry was adjourned to 28-12-2002 and on that day, he was examined and two others and they were cross-examined by the respondent. On 4-1-2003 the enquiry was completed. The Enquiry Officer based on the evidence of the witnesses and the documents available on records, found that the charges framed against the petitioner are proved and accordingly, he submitted his report to the respondent management. Then based on the enquiry report, the respondent management issued a second show cause notice under Ex.R4 calling for his explanation. The petitioner submitted his written explanation under Ex.R5 and since the explanation submitted by the petitioner was not satisfactory, the respondent management dismissed from service.

18. Hence on perusal of Ex.R3 and other documents filed on the side of the respondent, it is evident that the petitioner was given fair opportunity to defend his case and the respondent has correctly followed the procedure for conducting the domestic enquiry as contemplated under labour law. Hence, the enquiry conducted by the respondent management is fair and proper.

19. The learned counsel for the respondent has pointed out the apprenticeship order under Ex.P1 to Ex.P3, which runs as follows:-

(a) You will be subject to the Certified Standing Orders and regulations as and when become applicable or amended or extended from time to time.

(b) On completion of the apprenticeship period, your services with us as an apprentice will stand automatically terminated.

(c) Should be guilty of any misconduct during the period of apprenticeship, you will be summarily dismissed from apprenticeship without notice or compensation *in lieu of* notice.

(d) The company does not guarantee any automatic confirmation in services at the end of apprenticeship period.

20. The above orders state that on completion of the apprenticeship period, the petitioners' services will stand automatically terminated. Hence, it is the implied factum that the petitioner cannot claim right over the appointment, since the appointment itself is not a permanent one or does not guarantee any automatic confirmation in service. In this case, the petitioner on accepting the above terms and conditions of the order of respondent company, has joined as apprentice and during the period of apprentice, he had committed misconducts such as indiscipline, insubordination, aiding and abetting the co-workers to squat, instigating the other workers, which were proved in the domestic enquiry, conducted by the respondent management and hence, the respondent has taken action against the petitioner by terminating him from service, which is not against law.

21. The misconducts committed by the petitioner have been proved by way of conducting the enquiry and the said misconducts are very grave in nature during the period of apprentice. The respondent management has rightly taken the decision by terminating them from service. The decisions cited by the learned counsel for the respondent are squarely applicable to the present facts and circumstances of the case. However, the documents marked under Ex.P1 to Ex.P9 on the side of the petitioner are not supported to his claim. Hence, the petitioner is not entitled for reinstatement with continuity of service and back wages. But at the same time, the petitioner has rendered service in the respondent company for more than three years. He was hailing from poor family and he had been walking to this court for the past four years. Hence, considering the age of the petitioner and his family circumstances, the respondent is directed to pay a monetary compensation of ₹ 10,000 to the petitioner. Accordingly, this point is answered.

22. In the result, the petitioner is not entitled for reinstatement with continuity of service and back wages. However, the respondent is directed to pay a sum of ₹ 10,000 towards the monetary compensation to the petitioner. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January 2011.

T. MOHANDASS
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner :

PW1 — 30-9-2010 K. Sivakumar

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner:

EX.P1	1-7-1999	Apprenticeship order
Ex.P2	1-1-2000	Apprenticeship order
Ex.P3	1-7-2000	Apprenticeship order
Ex.P4	1-10-2002	Explanations given by the petitioner.
Ex.P5	—	Enquiry notice
Ex.P6	7-5-2004	Explanations given by the petitioner.
Ex.P7	4-5-2004	Dismissal order
Ex. P8	18-10-2006	Failure report dated issued by the Labour Officer (Conciliation), Pondicherry.
Ex. P9	—	Photocopy of letter given by the petitioner to the Enquiry Officer.

List of exhibits marked for the respondent by consent:

Ex.R1	16-9-2002	Complaint from Production Supervisor, marked by consent.
Ex.R2	16-9-2002	Complaint from the Quality Supervisor marked by consent.
Ex.R3	16-9-2002	Complaint from Technical Department marked by consent.
Ex.R4	20-9-2002	Show cause notice, marked by consent.
Ex.R5	1-1-2002	Written explanation of the claim petitioner, marked by consent.
Ex.R6	9-1-2003	Enquiry report with regard to show cause notice, marked by consent.
Ex.R7	26-4-2004	Second show cause notice marked by consent.
Ex.R8	7-5-2004	Written explanation of the claim petitioner, marked by consent.
Ex.R9	—	Petition filed under section 2A before the Labour Officer (Conciliation), Puducherry.
Ex.R10	—	Counter statement filed by the respondent management before the Labour Officer (Conciliation), Puducherry.
Ex.R11	1-7-1999	Apprenticeship order of the claim petitioner, marked by consent.
Ex.R12	18-3-2002	Warning notice issued to the claim petitioner, marked by consent.

Ex.R13 —	7-8-2000	Advisory note issued to the claim petitioner, marked by consent.
Ex.R14 —	10-9-2002	Warning letter issued to the claim petitioner, marked by consent.

T. MOHANDASS
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

GOVERNMENT OF PUDUCHERRY

CHIEF SECRETARIAT (HOUSING)

[*GO. Ms. No. 18/2011-Hg., dated 13th July 2011*]

ORDER

The Ministry of Housing and Urban Poverty Alleviation has evolved a framework for a State Level Mechanism *viz.,* "Third Party Inspection and Monitoring Agency (TPIMA)" to keep track of the physical and financial progress of the housing projects executed under JNNURM scheme, enable achievement of better quality of projects, cost and time control, improved planning, budgeting and measurement of impact under JNNURM. The agency will also ensure periodic feedback to all key stakeholders. As per the guidelines of the Ministry of Housing and Urban Poverty Alleviation, a Third Party Inspection and Monitoring Agency (TPIMA) has to be appointed by the State Level Nodal Agency for reviewing and reporting to the Ministry of Housing and Urban Poverty Alleviation about the housing projects executed under JNNURM scheme in the Union territory of Puducherry.

2. As per the guidelines published by the said Ministry, the Town and Country Planning Department, Puducherry which has been notified as the State Level Nodal Agency for the JNNURM scheme has called for request for proposals from the empanelled consultants of the said Ministry. The Evaluation Committee constituted *vide* G.O.Ms.No.4/2008-Hg., dated 3-3-2008 of the Chief Secretariat (Housing), Puducherry evaluated the proposals received by the State Level Nodal Agency and the Committee has chosen to appoint ''M/s. Mahindra Acres Consulting Engineers Limited, Chennai'' as the Third Party Inspection and Monitoring Agency (TPIMA) for the Union territory of Puducherry by adhering to the guidelines of the Ministry of Housing and Urban Poverty Alleviation, Government of India.

3. The Central Sanctioning and Monitoring Committee of Ministry of Housing and Urban Poverty Alleviation, Government of India has also approved the proposal to appoint M/s. Mahindra Acres Consulting Engineers Limited, Chennai as the TPIMA for Puducherry at the following fees:-

Desk review of all project documents (BSUP).	:	₹ 81,596 (Rupees eighty-one thousand five hundred and ninety-six only)
Desk review of all projec documents (IHSDP).	:	₹ 81,596 (Rupees eighty-one thousand five hundred and ninety-six only)
On-site visit (BSUP)	:	₹ 31,732 (Rupees thirty-one thousand seven hundred and thirty-two only) (per visit)
On-site visit (IHSDP):		₹ 31,732 (Rupees thirty-one thousand seven hundred and thirty-two only) (per visit)

4. Approval of the Lieutenant-Governor of Puducherry is conveyed for appointing ''M/s. Mahindra Acres Consulting Engineers Limited, Chennai'' as the Third Party Inspection and Monitoring Agency (TPIMA) for Union territory of Puducherry at the abovesaid fees for the projects approved by the Ministry of Housing and Urban Poverty Alleviation under JNNURM scheme. The State Level Nodal Agency will enter into a contract with M/s. Mahindra Acres Consulting Engineers Ltd., Chennai to act as the Third Party Inspection and Monitoring Agency (TPIMA) for the projects approved in accordance with the guidelines issued by the Ministry of Housing and Urban Poverty Alleviation.

5. The Third Party Inspection and Monitoring Agency (TPIMA) will become functional from the date of entering the contract and will review, monitor and report to the State Level Nodal Agency, State Level Steering Committee and Ministry of Housing and Urban Poverty Alleviation as per the terms of reference of the contract.

6. The Urban Local Bodies, the Parastatals and the Project Executing Agencies concerned with the execution of projects approved by the Ministry of Housing and Urban Poverty Alleviation under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) scheme will extend, cooperate and furnish all necessary documents, provide access to project sites, provide time and enable interactions with officials, consultants, contractors and all other support required for TPIMA to carry out its mandate as per the terms of reference of contract.

7. The cost incurred towards the meeting the expenditure involved in the functioning of Third Party Inspection and Monitoring Agency (TPIMA) as above will be met from the state funds provided under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) scheme and the State Level Nodal Agency will get the expenditure reimbursed from the Ministry of Housing and Urban Poverty Alleviation by submitting the claims.